

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This document presents Constitutional issues as they relate to the treatment of minority pro se's versus anglo saxon counsel and Judges. The Fourteenth Amendment of procedural due process is in dire jeopardy concerning bias in the Fourth Circuit Courts applying Backroom Jurisprudence. This as well as other issues which include; the 1964 V1 Act U.S.C.A. §1983, where the *Trial Court* and *Court of Appeals* will not consider the African American pro se material of facts which have been meticulously labored over and appropriately presented as such to only request a fair trial versus the anglo-saxon version of this case, even when the record was presented in specific detail in the minority pro se July 5, 2005 pleadings with supporting documentation in notebook exhibits.

The other issue relates to the presiding Magistrate judge over this case, involving his actions and conduct which have been grossly wrong, having allowed biased treatment towards a favored party within the judicial arena. His decisions have been protected based on U.S.C.A. §352 (A) (ii) that violates the entire judicial court system by allowing judges to rule, making detrimental decisions, knowing that the judicial power they possess often obscures the proper ruling of justice. This is noted specifically within this case and is not the intent of the founders of the United States Constitution to allow and or even offer protective shield basing any claim against the judge involved on the merits and ruling of a case. By allowing Judges and counsel special privileges in the Fourth Circuit or in the entire judicial system, who are expected to carry the justice, fairness, and equal procedural due, processes a stench of contaminated injustice.

The public requires a standard and responsibility in the judiciary system. A circumvented law of protection is allowing special privileges to not execute the office which justice arises from.

Serious policy issues are brought to light involving the DOE and WSRC Federal Contract. It has been consistently shown throughout this case that the pro se has maintained his employment relationship with the respondent. This same relationship was governed by the Contract, by which the conditions required the respondent to establish an approved employee handbook and/or personnel manual. This manual, identified as the 5B manual with subsequent policies, controlled the at-will status of the state. The Respondent, under the DOE contract order 350.1, further binds this obligation of performance.

The question surrounding this case simply stated is this; did the petitioner perform under a pre-discharge 2.7 provision while under a inappropriate probation status, and/or did the respondent violate a unilateral employment relationship when they terminated the petitioner after him serving 14 years plus in service and complying with the conditions of the pre-discharge policy with strict compliance to procedures 2.7. The other vital issue surrounding this case is the 5B, 5Q, 8Q, Order 350.1, manuals and DOE contract is written such that the languages embodied alters the common law status of South Carolina at-will condition.

## STATEMENT OF THE CASE

### A. INTRODUCTION

This case was a simple two-count claim, which brought a wrongful termination and retaliatory discharge against the Respondent. The Petition being a minority Pro se presented specific and vital arguments to this case in such a manner to which the Magistrate Judge, District Judge, and now the Appeals Court wishes to diminish by their treatment toward an African American minority Pro se. This has lead to biased treatment, of considering material facts, racial profiling of minorities, and inappropriate conduct. The facts below show backroom jurisprudence was brought into this case. The end result created, an unjust and unpublished biased opinion formed. The minority Pro se introduced solid and structured evidence; material facts of the errors made by the Respondent, Magistrate, and District Judge in the 8/04/04 pleading, the 6/5/05 pleading, and in the 7/05/05 pleading. Being, the Petitioner is an African American Pro se and because the Fourth Circuit Courts in South Carolina choose to allow biased treatment toward minorities and Pro se's, the 4th Circuit Court is perpetuating Chief Justice Taney's legacy that "**blacks have no rights which the white man is bound to respect**", *Dred Scot*, 60U.S. 393(1856). As it relates to the present case, the presiding Judges; Kosko, Harwell, and the Appeals Court judges have now decided that a company does not have to follow their promise to DOE, nor to their employees even after signing CFR's of compliance with DOE if the same are of a minority status, which a company at their own discretion does not have to follow their policies and agreements. The fact of this matter consistently shows that the violations have been committed by either the WSRC company itself, or by an official of the company. Specifically, within this case the South Carolina Courts have not appropriately followed or considered the

material facts presented by a non-lawyer Pro se who is an African American. Normally, this petition of writ would have been filed in the South Carolina Supreme Court. However, the presiding 4th circuit judges know of their errors and have protected each other within the confines and merits of the judicial system specifically; applying as a cover **28 U.S.C. §352 (A) (ii)**. The laws have not been applied to the material facts of this case for a fair trial to take place, which would not be considered, and unjustly denied due to the protective shielding which prevents the 4th Circuit, Trial Court, and Appeals Court from taking responsibility for errors in judgment and discretion. For the aforementioned reasons, the matter is brought respectfully before the Supreme Court of the United States for consideration. The Statement of facts and uncontested facts to record show the Magistrate did not properly review the materials presented by the Pro se as the nonmoving party against the respondent's summary motion. Court Tr<sup>2</sup>, pg5, 6/14/04, where the Magistrate states; "we are not going to laboriously cull through those thousands of documents in that wire basket in order to determine the kernel of truth which we need to make a decision". How can a minority Pro se establish facts in the evidence presented in the documents when the Magistrate recites in the court's record that he will not review them? Throughout this entire case the Magistrate was **antagonistic and condescending** toward the Pro se, which devalued any material of facts presented at the 1/05/04 hearing. Review the audiotape to hear how the Magistrate readily accepted what ever the counsel for the respondent stated relevant to the minority responses. This was biasing against the minority Pro se. If any decisions had been predetermined, material evidence, and facts been ignored by the Magistrate, District Judge, and now the Appeals Court, they surely have been inappropriate ones. The Magistrate Judge showed blatant bias relating to the Statement of Uncontested Facts specifically by not following

his own instructions and allowing alteration of a Court document by the respondent counsel. The District Judge then disregarded the Statement of Uncontested Facts, and concluded there was no genuine issue within the material facts presented. Thereafter, the inaccurate report was established without the evidence of statement of uncontested facts, in its entirety. Consequently the Appeals Court affirmed the Trial Court's decision as a unpublished opinion.

### **B. Magistrate's Background Information**

A series of hearings were conducted before the Court on motions compelling the respondent to provide key information relative to the case. The Magistrate asked the respondent counsel if a dispository motion was to be filed. (Court Tr<sup>1</sup> pg14, 1/05/04 hearing). During the hearing, the Magistrate showed bias treatment specifically related to the time allowed for responding to the discovery requests and respondent counsel blatantly refusing the requested material during discovery without filing an order of protection. (Court Tr.,1/05/04 and cassette tape.) The Magistrate at the hearing on January 5, 2004 asked the respondent's counsel "have you filed a motion for protected order". The response was "no your honor"(See attached Court Tr. Pg.4 **Appendix H**). The Magistrate allowed the respondent to submit discovery information after the said Scheduling Order guideline, which was November18, 2003. See respondent's answers to the Petitioner request which was dated November 28, 2003 as exhibits M2, M2A, M2B, M2C, and M2D of providing the information. The respondent then provided only partial material, which prompted the Petitioner to ask the Court for intervention. The Magistrate proceeded to admonish the minority Pro se. The Magistrate did not appropriately address the Respondent's non-compliance to the Petitioner's request citing Local Rule 26, to produce entire documentation imperative to the case. During the Motion to compel hearing on .01/05/04, the Magistrate

addressed the Petitioner's exhibits as if the exhibits were separate motions filed; (See exhibits 615 and 616). (See exhibits A, B, C, D, E, and F for the Petitioner's motion exhibits). He further stated that no Certificate of Service was attached. The statement was untrue. The Pro se did in fact produce a Certificate of Service which had been appropriately attached and submitted to, which the Magistrate claimed was not filed. (See Court Transcript 1/05/04, pgs.3, 4 and 5). The Petitioner received the respondent exhibits and those were also presented to the Court as exhibit attachments to the motion filed on 12/13/03. (See the respondent exhibits 1A, 1B, 1C, 1D, and 1E). The Magistrate then construed each exhibit as a separate motion and denied them on the basis that the minority Pro se failed to follow the Local Rules of South Carolina 7.06. The Magistrate used each exhibit as a separate motion that he said needed Certificates of Service. Certificates of Service were not required for **listed exhibits** of ongoing requests for the same materials. With respect to South Carolina Local Rule 7.06, the minority Pro se did submit timely and complied with the proper filing of the response for the December 2003 motion. The Petitioner Pro se's requests were repeatedly ignored by respondent's counsel, which the Magistrate Court inappropriately allowed. (See exhibit 616 and for motion filed at Tab 3). (See exhibits A, B, C, D, E, and F for Petitioner's requests).

The Magistrate demonstrated racial biasing allowing the respondent's counsel to violate a Federal Rule of Civil Procedure regarding discovery requests and the local rules of the state. Certainly, respondent counsel knows better than to not refuse or object to a request without filing a protection

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1 Tr. represents Court Transcript

2 Petitioner did not attach Certificate of Service to the following Court's exhibits A and B because they were identified as exhibits.

order. This behavior relative to this case is supported by Justice Taney's theory of an African American with regards to equal and due process. The Court will not and failed to admonish Counsel due to **majority** versus **minority**. As a result; the minority Pro se had to conduct 5 separate depositions from WSRC management and staff, without having proper material from the Respondent. This was a tactic to impede proper and extremely vital deposition questions. The magistrate allowed more than 30 days in favor of the Respondent and Counsel to prepare and file their motion for Summary of Judgment. The non-lawyer Pro se was given only 15 days conditionally to respond. (Court Tr., pgs. 14-18 at **Appendix H**). Thereafter, a status hearing was held 6/14/04 on a Pro se motion to dismiss without prejudice. During the hearing 6/14/04, the Magistrate allowed the respondent to file a second brief, receive a responsive brief, and state a response without the minority having the same rights. The Magistrate stated "if I choose to go forward on the Summary of Judgment and issue a Report In Recommendation, I want to go forward with an agreed upon statement of facts". (See attached Court Tr, 6/14/04 pgs.5-10 **Appendix I** and review the audio cassette at **Appendix J**) Further down in the magistrate's instructions, he states "only the facts necessary for this Court to determine Motion for Summary of Judgment will be included in these statements of undisputed facts. All but irrelevant material will be excluded". The Magistrate Judge gave contrary and conflicting orders as to what he specifically instructed the parties and the Court. The Magistrate Judge switched from the Statement of Uncontested Facts in this case to points that are contested and disputed and he switched from what he stated where the determination was to come from. The Magistrate Judge drafted his (R&R<sup>4</sup>) and introduced disputed material from the Respondent's initial Summary Judgment [40-1] as if the material was true and undisputed. The determination

stemming from this was outside the instructions relied on. Therefore, the courts should reject the Magistrate's Report. The Magistrate can not use the Respondent's initial [40-1] instead [41-1] especially after ordering by written expression where and what the determination would come from. The Magistrate used facts that were changed within the (R&R). Review the Court's Tr. pg5, items 3-25, and pg.10, items 1-19 from 6/14/04 hearing at **Appendix's I and J** to verify the Magistrate violated what he communicated. He communicated one thing then did the opposite. Look into the same Court's Tr., pg10 items 2-16, on 6/14/04 the magistrate specifically tells the minority Pro se where the Summary of Judgment decision was to come from. Therefore, he could not inject other undisputed facts to aid the defense acting as an advocate. The Magistrate stated, "at the conclusion of this discussion, then you will recite into the record, and I will come back for it, these undisputed facts. And I will rely upon those facts, if I decide to issue a report and recommendation on the summary motion". (Not any other facts or undisputed facts could the Magistrate use or inject against his specific instructions given to the minority Pro se and the Court). The Magistrate specifically told the minority Pro se that he will be arguing The respondent's second brief. Court Tr. 6/14/04, pg.22 where

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3 (pg 5, ¶6), (pg 6, ¶13), (pg 6, note items 16-20), (pg 7, notes 21, 22, 24-27), (pg 8, notes 28, 31, 32), (pg 9, notes 38, 39, 40 and 43), (pg 10, 44-47, 49 and 53), (pg 11, notes 54, 56, and 58), (pg 12, notes 63 and 68), (pg 13, notes 69 and 75), (pg 15, notes 79 and 80), (pg 16, notes 81 and 82), (pg 17, note 83), (pg 19, note 84), (pg 20, notes 85-89), (pg 21, note 90), (pg 22, notes 91-95), (pg 23, notes 96 and 97), (pg. 25, notes 100 -105), (pg .26, note 106), (pg 27, notes 107-109).

4 (R&R) is understood as Magistrate Report and Recommendation filed July 19, 2004.

the Magistrate states "you know what issue he's going to raise, all you have to do is look at his brief. He's laid them out in detail". Contrary to the Magistrate's specific instructions, the Magistrate himself included material that is not in the respondent's second brief nor was apart of the Petitioner's deposition. The Magistrate started out in his (R&R) on 7/19/04 using the uncontested facts as instructions he recited into the court record that he would rely on but switched to disputed facts as shown in (Petitioner note point<sup>3</sup>).

The Trial Court Judge on page 5, of his Order granting the Respondent's motion tries to excuse the Magistrate's advocate conduct by stating in his Factual Allegation Section that the minority Pro se "alleges" and then that "what the plaintiff does not appear to realize is that the magistrate Judge could determine that a fact was uncontested despite Lawrence's refusal to include that the fact in the statement of uncontested fact if, for example the fact was admitted by the plaintiff's deposition" More importantly, points which the Magistrate uses do not originate from the Petitioner's deposition in which the Trial Court District Judge tries to mislead the reader in upholding the inappropriate position. The magistrate's references come from the respondent's initial summary [40-1]. Judge Harwell referencing the petitioner deposition is a ploy to misguide the reader and Court. The Petitioner filed a Statement of Disputed Facts against the Respondent's allegations. Therefore, the Respondent's false documents can not be concluded as Material of Facts by which a legal conclusion is drawn from especially if the allegations are issues of dispute. See South Carolina Court of Appeals, in Bari v. Aiken Regional Medical Center, 352 S.C. 271, 573 S.E. 2d 830 (2002). In light of further misconduct and accountability of the magistrate, the respondent's counsel requested in his second brief that the Magistrate to step out from his position

of authority into an advocate role to pick, and choose certain selections or portions from the respondent's initial summary and disputed material what the Magistrate thinks and feel would look favorable in presentation to the eyes of a reader and the Federal Court. The scenario table was exclusively set such that if the decisions of a Magistrate, District Judge, and Appeals Court were all in favor of the respondent agreed upon case, normally it must be the correct decision and no court would oppose the line of judicial media filters. However, these judges or filters of the courts have been prejudicially clogged with racially profiling and biasing in determining this case. The previous Courts failed to uphold their responsibility to the minority Pro se under the United States Constitution and unto the office served to fairly review this case. The Pro se's material facts were not appropriately considered vital to this case and the Courts contravene its duty on the basis of status and ethnicity. Reflecting the magistrate's biased treatment toward the Petitioner, he carefully selected material from the white Respondent's first Summary Motion [40-1] and not from the respondent second Summary Motion [41-1]. Not only did the Magistrate, allow counsel for the respondent to change court documents, the Magistrate used the altered version in his (R&R), the District Judge and the Appeals Court also made allowances for the blatant and criminal changes, then followed the faulty statement of uncontested facts that the counsel for the respondent changed. The respondent in his 6/21/05 brief, defends his actions of changing a crucial court documents<sup>5</sup>

The changes did indeed adversely affect the case. Throughout the initial Summary **40-1** respondent counsel presented certain specific documentation contrarily as the

<sup>5</sup> Inconsequential, irrelevant, inadvertently done, no court transcript was available, not relevant to the summary, words was not used by the magistrate, and the changes did not affect the meaning.

Pro se having an attendance issue. Of course this was secretly omitted from the statement of uncontested facts when the respondent served to the court and petitioner the record statement because it establishes that the Petitioner followed the conditions imposed by the Respondent and there were no grounds to terminate the Petitioner's employment. (See all material of fact in 6/14/04 Court Tr., pgs 13-17 and in the Pro se's 7/05/05 pleading pgs.2-17). The 7/05/05 pleading with the supporting exhibits shows absences were all approved, excused or granted. Therefore, if the absences were granted, or the absences were medically related versus employment, that the Animus's of the Respondent's staff Dr. Botnick is a consequence, or that the application or DOE Order 350.1 supports a unilateral position, surely, the changes are the very important. Another important factor relating to the altered documentation is one where the Magistrate used the changed document in his report. Was the Magistrate aware that the documentation had been altered or was there bias treatment towards the Counsel? Did the Magistrate trust that his decision was based on proper justice applied to this case and not of his own merit to which his decision under the rules of misconduct is protected? The Magistrate told both the court and minority Pro se on pg21, 19-24, Court Tr., **Appendix I** and **J**, that the agreed facts are what were recorded on the tape recording. Then, the Magistrate served upon the petitioner his Order 6/14/04 Appendix F identifying where his decision would come from. However, the facts that the Magistrate did use are the secretly changed facts presented by the respondent counsel, as well as disputed facts from the respondent's initial summary motion [40-1]. For example, in the statement of facts (¶9), the Magistrate used the word "absent" in his 7/19/04 report on pg.5 of 30, and Counsel for the respondent used the words "employment absence" in the statement of uncontested facts instead of what was specifically recited into the court record. The established material fact was

medical absence. Clarification of the absence defines whether or not the Petitioner was covered and approved by management and the personnel 5B handbook accordingly. The Magistrate also omits the same points the respondent counsel secretly omitted; "By April 2000, Lawrence was warned that unexcused absences would result in discipline, and future absences - I'm sorry, I might have to ask him (plaintiff) did we agree to that or not would be limited to genuine emergencies"? The Petitioner responded: "We agreed to that". (See attached Court Transcript 6/14/04, pg13, items 8-13). The Magistrate introduced the same point as a disputed fact from the respondent's initial summary motion [40-1] at the defendant's Tab 22 on pg 7 of 30 of the magistrate's (R&R enclosed **Appendix D**). The Magistrate failed to introduce the point as a material fact that was recited in the record on pg 13, items 8-12, Court Tr., 6/14/04. Compare the Court's Tr. from 6/14/04 to the magistrate's report. See also the Magistrate's ¶9, ¶11, ¶16, ¶17, ¶18, and ¶49 words were changed and used. This was specifically pointed out to the courts and a judicial misconduct form was filed that listed the inappropriate conduct of the Magistrate. (See Pro se 7/05/05 pleading pgs 30-33). Within the Magistrate's report, points that were changed are listed above. Moreover, material was introduced that was never originally submitted to the court. The Magistrate attempts to reference material that was never served upon the Petitioner by the respondent. Notes 107, 108, and 109 were never apart of any previous document severed. (See pg.27 of 30 in the Magistrate's (R&R)). How can the Magistrate write about 107, 108, and 109 if these positions were never supported in any of the previous submitted pleadings from the respondent? This suggests conspiring with the respondent counsel secretly which is indeed a violation of his office and the Federal Rules of Civil Procedures. To further show the willful intent regarding the changing of a court document and the

Magistrate following the faulty document, Mr. Thompson's own letter on 6/15/04, a day after the 6/14/04 hearing, stated "I completed my statements of uncontested and contested facts today and have overnigheted copies to Mr. Lawrence, I also left him a voicemail offering to fax or email them, The clerk was very helpful in rushing a copy of the hearing tape to me". This proves counsel had full knowledge of the material facts established but chose to criminally change the statement of uncontested facts after receiving an audio copy of the 6/14/04 hearing. This was tampering with court record evidence that violates the law and that act should have been punishable under the similar statutes as perjury and tampering with court evidence. Counsel still should be sanctioned for the criminal intent which the Magistrate, District Judge, and Appeals Court made allowance for, even after the Petitioner specifically directed it to the court's attention in the following pleadings: **7/1/04, 8/04/04, 8/24/04, 6/5/05, and 7/05/05**. To show the unfairness, and biasing, the white respondent counsel was not punished. The **(R&R)** shows a multitude of errors pointed out in the 8/04/04 and 7/05/05 pleadings from the Pro se. The District Judge allowed and excused the errors, and the conduct involved. In Judge Harwell's Order, **Appendix C**, he adopted the faulty **(R&R)** from the Magistrate. Then the Appeals Court affirmed from the unpublished opinion from the faulty **(R&R)** by way of the District Judge's Order. The evidence is clear when time is allowed to review the Pro se's material of facts that there were errors made by the lower courts and therefore an unpublished opinion hides the errors and the minority material facts become un-followed and white-washed in a dominant biased Court system of South Carolina. The actions of applied backroom jurisprudence as the standard regarding the black minority pro se's who relied on the judicial courts for justice. In addressing biasing of the minority Pro se, **Second Circuit Judge Jerome Frank wrote in Courts on Trial: Myth and Reality in American**

Justice 414 (1949) that "to recognize the existence of such prejudices is the part of wisdom. The conscientious judge will, as far as possible, make himself aware of his biases and, by that very self-knowledge, nullify their effect". It is hard for the Courts in this case to accept or identified that they were biased.

"**The INFORMAL BRIEF**" with a Statement of Fact contained with supporting documentation attached on June 6, 2005 presented the questions of law concerning employment handbook theory and contract application that the Respondent's 5B manual and DOE Contract Order 350.1 with all supporting provisions therein modifies the at-will status of South Carolina. The minority Pro se has challenged the biased 4th circuit court with evidentiary facts from previous affirmed cases that in such cases involving a question of unilateral contract, handbook policies, a pre-discharge and termination provision, that once a determination has been made the Magistrate, Trial Court, and Appeals Court must defer to a jury determination as to the inferences and conclusions to be drawn from the language within the writings. In addition, the writing exists from the respondent's 5B handbook that by application alters or modifies the at-will employment relationship. In this specific case the Trial Court confirmed the application of WSRC's 5B Manual procedures, proceeded to interpret the languages embodied in the WSRC 5B Manual and DOE contract 350.1 and then applied the same to the Trial Court version of the facts of the case. The Petitioner presented that South Carolina provides for written modification of the at-will employment relationship; that the 5B Manual is such a written modification and that **the Petitioner is entitled to get to a jury on his claim of Wrongful Termination and Retaliatory Discharge under the law when title VII Amendment to Constitution of the United States** guarantee trial when a controversial issue involves common law suits such as the at-will status

and when the state follows such cases involving determining the existence of a unilateral contract is province for a jury and jury instructions. The minority Pro se firmly states with absolute facts, both the Appeals and the District Judges improperly affirmed and granted the respondent's motion for summary of judgment. The Appeals Court stated that they have reviewed the record and affirmed that the reasons cited by the District Judge. However, facts to the record show the affirmation was based on false allegations and a faulty statement of uncontested facts, illegal used material outside the magistrate Order. Certainly no writings were made to show what was specifically reviewed from the District Judge's Order versus the material facts presented by the Pro se. The minority Pro se states no such writing of affirmation exists because the record that the Appeals Court followed was replete with errors followed by the District Judge. In addition, the Pro se pointed out that the District Judge in his Order filed 4/4/05 made errors. (i.e. on pg. 3, the District Judge specifically wrote in his order that "the defendant terminated the plaintiff due to plaintiff's excessive absenteeism, insubordination, and failure to follow-policies and instructions given by management in connection with attempts by management to correct his absenteeism")? The District Judge interpretation is not factual. The record which the Appeals Court is trying to hide shows a complete contradiction to the District Judge Order. Review the record exhibits WSRC Lawr 676 and 678 which state the Pro se was terminated for only failure to follow the terms of probation and insubordination which is different then what the District Judge untruthfully told the court. The material facts show the Pro se did follow the terms and conditions of the inappropriate probation. Remember the District Judge stated the Plaintiff failed to correct himself. However, the record before the courts validated the Pro se appropriately met the conditions of the inappropriate 2.7 pre-discharge policy for 11 months according to attached exhibits as **Appendix L**

**WSRC-LAWR - 549, 577, 604, 609, 611, 614, 619, 625, 644, and 650.** This contradicts what the case record from the District Court Judge's Order, pg 3 specifically documents. Even when the Petitioner complied with the terms of the pre-discharge provision 2.7, that limited the employee from the common law at-will condition, the respondent still terminated the Pro se 1 month short of completing the inappropriate probationary period and they did it from personal animus's. Review the petitioner's previous work assessments to see the Pro se evaluation yearly showed excellent to above average. With respect to fairness, of course this would not be reviewed by the biased Appeals Court, regardless of the above evidence and exhibits presented. The Respondent's inappropriate action of an employee reprimand applied the discipline policy 2.7 pre-discharge provision from the employees' handbook, but deviated from the pre-discharge policy when it did not benefit their need. See Miller at 127 . Actions were then placed against the Petitioner who was at the point of ending the probation condition under the pre-discharge 2.7 provision. Nevertheless, the Appeals Court reached it's conclusion without proper reviewing the facts and accepted the Judge's statement by reasons unsupported versus on opinion rather than justice. This is detrimental to the black minority and or Pro se who choose to represent themselves under a Pro se status in the 4th circuit in an employment claim under a unilateral contract handbook theory. Even with evident provisions instituted from the writing and languages in an employer and employee's relationship 5B employees handbook manual, the 4th circuit Court of Appeals has now affirmed these conditions do not apply if a minority non lawyer Pro se presents the evidence thereof. The other important point from pg.3 is the District Judge trying to use the Respondent's Local Rules Interrogatories LCR 26.03 as a material of fact for support. Under no condition can the District Judge use an interrogatory point and

conclude it to be a fact when the allegation is an issue of dispute. Facts to record from the minority Pro se's pleading on 7/05/05 totally destroys the Respondent's, Magistrate's, District Judge, and the Appeals Court position. It is this very existence the 7/05/05 pleading that birth the unpublished opinion from the Appeals Court regarding the Petitioner's attendance record. By those material facts from the Pro se that is contrary to the Court's version is the basis upon which specifically this biased Appeals Court is trying to wrongfully uphold and cover their position. At the present, the content of this case isn't about the material facts involved, but rather the powerful dominant judicial front of brotherhood judges. The Appeals Court is biasing and blindly following the District Judge's Order. The District Judge's record reveals how Summary of Judgments are defeated or how they are approved from the moving party and non-moving party. The law according to Federal R. Civ. P.56 (c) states if there is no genuine issue as a material fact from the non-moving party, then the moving party is entitled to the Summary of Judgment emphasizing on vital major issues. The District Judge cited the following cases to support the decisions his judicial brotherhood followed: Shealy vs. Winston, 929 F. 2d 1009, 1011 (4th Cir.1991), Id (quoting Anderson vs. Liberty Lobby, Inc., 477 U.S. 242, 247- 48 (1986) with emphasis directed to the requirement that there be no genuine issue of material fact. What is the Appeals Court stance regarding that on June 14, 2004 hearing, the African American Pro se and counsel for the respondent established material facts to this case for the record? See the attached Court Tr. from June 14, 2004, pgs.11-22 with emphasis on pg.22 where the magistrate recites what was established were material of facts. Remember a summary of judgment as pronounced by the District Judge should not have any genuine issue of material fact. What legal consequence will this panel of bias judges face given the fact that on page 19 of the Plaintiff's Objections and Request to Strike the Defendant's Unsub-

stantiated Reply filed July 5, 2005, the advocate Magistrate recited into the Court that day, "the question becomes, are the policies, do they rise to the level of a contract" (Court Tr., Pg.20, 6/14/04). In line item 18, pg 20 of the Court Tr., the Magistrate states clearly into the record "that's a legal issue but based upon a factual predicate". Being presented by an African American Pro se, this creates the Judicial blinders to be worn again because this brother hood of Judges apparently wishes to ignore and white wash the record due to the unsubstantiated material of facts and the errors blatantly displayed throughout this case from both judges and the respondent involved. The acceptance and affirming from the opinion is a systematic way to devalue the minority Pro se's evidence just because the African American Petitioner silhouette is of the minority status and is not of the same legal status of the white anglo-saxon respondent counsel, Magistrate, District Judge, and now the Appeals Court for the 4th circuit. The following questions still remain; was the evidence presented by the minority Pro se properly reviewed, and if so what specifically documents the parts from which a legal answer was applied? What material of facts was applied to and against the law? Finally, what social precedence of previous cases was applied from both the Court of Appeals and Supreme Court?

### C. ARGUMENT

The question still remains unanswered, whether or not the language in the 5B manual, DOE contract, and **DOE Order 350.1** creates a unilateral contract? Even the Magistrate on 6/14/04, pg.20, states "the question becomes, are the policies, do they rise to the level of a contract"? In line item 18, pg.20, court Tr. 6/14/04, the Magistrate states "that's a legal issue but based on a factual predicate" Remember, in the district judge order, pgs3-5, he specifically states the conditions for Summary Judgment and that there be no genuine issues of facts. Either the Magistrate was wrong by

stating "that's a legal issue" or the District Court is not following the law as pronounced by the District Judge on pgs3-5 of his order regarding the legal standard in comparison to the Magistrate's statement. **Material facts:** Both magistrate and district judge recognized the existence of the 5B manual and especially 2.7 and 2.9 procedures within the 5B manual. Facts to the record the respondent counsel admitted to, on 6/14/04 pg12, Court Tr. that the Defendant uses a system of contacts for disciplinary actions, which is also a part of procedure 2.7 that is apart of the 5B manual. **Material facts:** The records indicate that the respondent was bound by the DOE/ WSRC contract to follow its established policies. Court Tr. 6/14/04, pg11, item 25, pg12, items 1-5, pg17, items 3-4 and items 14-16, pg18, and pg20, items 8-18. The essential elements of the claim against the Respondent are such that; 1) WSRC had enforced at all times a policy and procedural manual identified as the 5B Manual an employee handbook covering all relevant aspects of the employment relationship including a pre-discharge and termination procedure. 2). The Petitioner was terminated in violation of 2.7 pre-discharge procedure also, 2.9 termination procedure of the unilateral agreement defining the employer and employee relationship. The South Carolina Courts follows the traditional at-will employment law unless modified in some way by the writing construed as an employment agreement, handbook, policies and procedures; the employer has the absolute discretion to terminate an employee at any time for any reason. Nevertheless, the Supreme Court of South Carolina first modified this at will status in 1987 in the case of Small v. Springs Industries 357 S.E. 2d 452 (S.C.1987). Springs was upheld in Miller v. Schmid Laboratories, 414 S.E. 2d 126 (S.C.1992). See Kumpf v. United Telephone, 429 S.E. 2d 869 (S.C. App. 1993); and Williams v. Reidman, 529 S.E. 2d 28 (S.C. App. 2000). Now suddenly, the 4th Circuit Courts want to abandon

previous holdings that involved cases with similar fact patterns as the minority Prose's in this present case just because the Petitioner has entered the arena being an African American Prose status vs. an experienced attorney at law, the Magistrate, District Judge, and Court of Appeals who are white. The courts surely their position is in default under the laws of South Carolina as it is presently known, that the existence, interpretations and applications of writings to the employment relationship are questions for a jury and jury instructions unless the evidence is clear and undisputed.

The Respondent false allegations and altered documents can not be concluded as material of facts by which a legal conclusion is drawn from. The South Carolina Court of Appeals, in Baril v. Aiken Regional Medical Center, 352 S.C. 271, 573 S.E. 2d 830 (2002), reversed a lower court's entry of summary judgment on a fact pattern similar to the one in this case. Regional Medical Center had published a handbook, which they contended was not apart of the employment relationship due to the disclaimers and statements found within the handbook. Plaintiff Baril contended that the handbook, as well as certain practices of the Defendant, were part of the employment relationship. In reversing the summary judgment, the South Carolina Court stated: Summary judgment isn't appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied". Moreover, Summary Judgment is a drastic remedy which should be cautiously invoked so no person will be deprived of a trial of the disputed factual issues. (Emphasis supplied) (Citations omitted).

The minority Prose disputes the Trial Court version and statement of South Carolina law as expressed in Smalls vs.

**Springs Industries, 388 S.E. 2d 808 (S.C.1990) (Small II)**

the court failed to fully state the holding of the South Carolina Supreme Court: The termination of an at-will employee normally does not give rise to (a) cause of action for breach of contract (citation omitted). However, in certain limited situations, an employer's discharge of an at-will employee may give rise to a cause of action for wrongful discharge such as where the at-will status of the employee is altered by the terms of an employee handbook. **Small v Springs Industries, 292 S.C. 481, 357 S.E. 2d 452(1987)**

**(Small I)**. In the following cases that were affirmed and reversed in contrary to the now bias Court of Appeals are: **See first Small I; then see Small II: Miller v. Schmid Laboratories, Inc., 414 S.E. 2d 127 (S.C. 1992); Kumpf v. United Telephone Company of the Carolinas, 429 S.E. 2d 869 (S.C. App. 1993); Jones v. General Electric Company, 503 S.E. 2d. 173 (S.C. App. 1998); Prescott vs. Farmers Telephone Cooperative, Inc., 516 S.E. 2d. 923 (S.C. 1999); Williams v. Riedman, 529 S.E. 2d. 28 (S.C. App. 2000); Conner v. City of Forest Acres, 560 S.E. 2d 606 (S.C. 2002); Baril v. Aiken Regional Medical Center, 573 S.E. 2d 830 (S.C. App. 2002)**

More importantly, the Magistrate, the District Judge, and the Court of Appeals have overlooked previous holdings regarding these cases in South Carolina. The cases at their very foundation were affirmed on contract issues based on a unilateral employment offers that by the written language, the act of working **14 plus years**) under the existence of an offer embodied in the written language, altered the traditional **at- will** status in the state. Similarly, this case has the same pattern of facts and therefore the law should also apply similarly. In addition, under those standards the Supreme Court and the Court of Appeals reversed so many cases that the Summary of Judgment was granted to the employer Defendants by the lower courts. This has set precedence in the judicial highway to follow from a

procedural outline. Contrary to previous holdings of South Carolina Supreme Court, and following the judicial highway, the written opinion in its most vague description received from the Court of Appeals conflicts and goes directly against the decisions made is similarly related to the present minority Pro se case. As stated by the *Baril Court supra*, it would be the exception where a motion for summary judgment would be granted on any issue related to the relevance of a handbook or the conclusion or inference to be drawn there from. Under current South Carolina law, all such questions are for the jury. The Plaintiff working as a long term permanent employee under the DOE and WSRC contract agreement as an employee for 14 plus years in reliance of the offer and obligations set fourth under the work period a unilateral contract altering South Carolina's *at-will* status. The Order 350.1 and the 5B employee handbook is also sufficient enough evidence or consideration to make the promises (the employee's handbook) binding. **Appendix J** of the attached DOE Contract with the Respondent is only a small section identify a contract obligation to have employees personnel policies, and others contract requirements regarding the safety obligations that was suppose to be followed by the defendant. As in the case of *Springs*, 357 S.E.2d at 454, 455, the Court reasoned that, "It is patently unjust to allow an employer to couch a handbook, bulletin, or other similar material in mandatory terms and allow him to ignore these very policies as a gratuitous, non-binding statement of general policy, whenever it works to his advantage." The court held a jury can consider an employee handbook, along with other evidence, in deciding whether the employer and employee had a limiting agreement on the employee's at will status.

*In Miller* at 127, South Carolina confirmed *Springs*. In *Kumpf* at 871, 872 the court reasoned that a company

cannot announce a policy with the view of obtaining the benefit of the policy through improve employee relations and quality of the workforce and then treat I promise as illusory. *In Williams at 32, 36*, Springs was cited. The Court held that the existence of a handbook could give rise to a cause of action for wrongful discharge and that the question should be submitted to a jury when (1) the existence of a contract is questioned; and (2) the evidence is conflicting or admits of more than one inference. Unless the law has changed the minority Pro se claims are specifically reinforced by the previous holdings and Magistrate's reciting into the court record on 6/14/04, pg 20 that as a result of the 5B manual employee handbook and DOE Order 350.1, does the policies therein alters the at will status and rise to a level of contract. The other inferences include the minority as being a third party beneficiary from the long term contract between WSRC and DOE as a permanent employee. Most importantly documented the bias Magistrate states "That's a legal issue but based upon a factual predicate." Court Tr.,pg.20, 6/14/04 hearing of Lawrence v. Westinghouse. Aside from the various misreading from the Respondent counsel, the Magistrate, and the District Judge using interrogatories, as a fact. This case is replete with so many errors that the Court of Appeals surely if at its very small minute reasoning must apply the laws as mentioned in the above cases. The Court's willingness to only use a small portion of the statements of the uncontested facts is an attempt to draw a legal conclusion as to what writings embodied the employee relation and the level of the 5B Manual rises to regarding the at will status without considering the entire record, the DOE Contract, the CFR's signed by the defendant, the contract requirement regarding 350.1 Order from DOE for the defendant to have suitable personnel policies, the plaintiff's employment assessment as well as the Plaintiff's employment relationship with

**the Defendant.** It is the legal conclusions that the unfair Magistrate drew from, which were in **default** and **outside** the boundaries of where the determination as described in this (Court Tr.6/14/04) was to come from. The source from which it was to come from was the uncontested statement of facts as plainly shown in the Magistrate's Court Order. See **Appendix F.** Therefore, the court could not offer conflicting instructions so much so to be an advocate by giving instructions in a Court Order on 6/14/04 to the Petitioner but doing just the opposite in action. The law today in South Carolinas Courts is of the position that in every handbook case where a question was manifested involving a contract issue either implied or through performance (unilateral), the South Carolina Supreme Court has said that the interpretation of the handbook language is an issue for the jury. **Summary judgments in favor of the Defendant in each cited case were re-versed and the case remanded for trial by a jury.** This case encompasses the same arguments. Therefore, the law should still hold instead of the Petitioner's profiled status as a non lawyer who is an African American Pro se. The Trial Court's version goes against what the **2.7 promises** indicate in complying to the conditions and restriction arising from placing the Petitioner on the inappropriate probation. Remember, the DOE contract requires the Respondent to follows its policies per batam in the 5B manual. Court material fact on 6/14/04 presented in **Appendix G** documents the respondent was obligated under a promise to follow their policies in concert with the probation that if the Petitioner was off or absent, it had to be for emergencies supported by a doctor excuse and by those conditions the Petitioner's employment would be protected as a part of the contractual obligation for the Respondent to keep their promise while the Petitioner was under the pre discharge provision 2.7. The record is and was clear as to the emergency of the Petitioner's son's ongoing medical condition and medical history file from the

Petitioner's son's physician. The Petitioner provided to the record his doctor's excuse, the admission to the hospital dates of son's stay which preformed the Petitioner obligations under a unilateral contract of the pre discharge 2.7 provision and the Respondent's conditions. Still, the minority Pro se was terminated after successfully working under the promise of the 2.7 pre-discharge provision after 11 months of compliance and providing the hospital records of son's critical health issue that caused the absence related to the petitioner's termination and the petitioner provided his own personal physician doctor excuse relating to complying under the conditions placed that is contrary to the Magistrate, District Judge and now the bias Court of Appeals decisions. The material facts are the contacts or monthly evaluations listed below which appear as the Petitioner's **Appendix L** also were presented to the Trial Court showing the Respondent supervisor and Petitioner signed monthly contacts of agreements as required by the 2.7 pre discharge provision which indicated the Petitioners for 11 months obeyed under the provision and the Respondent **abridged and violated their duty under the SB manual 2.7 provision and their duty and obligation to DOE as recited by the Respondent Counsel on 6/14/04.** See monthly contacts at **Appendix L**. To show the magistrate and district judge was off base when they specifically told the court the petitioner fail to correct any alleged act regarding attendance. Material facts present the Court specifically identified the respondent's staff doctor Robert Botnick had personal animus against the pro se and documented he was targeting the petitioner in exhibits listed in the plaintiff's 7/5/05 pleading. L4<sup>12</sup> notebook. The record presented to the Courts identified the respondent's supervisor Ralph Thigpen was responsible for this cause of action that is before the court. Thigpen's record before the magistrate, trial court, and the appeals court factually shows Thigpen had a history of cursing employees and

management. Thigpen had a history of causing other employees termination as identified in his deposition pg. 34, item 16 and pg. 22 items 7-13. Thigpen cursed all his direct management at WRSC. He threaten and cursed his employees who worked under him. Thigpen had been written up on several occasions for being an intimidator and violating the respondent's employees and Rules of Conduct. Thigpen's has along extensive history of cursing his employees and the record before the courts identified Thigpen's chronic behavior and violation of the respondent's Rules of Conduct. Thigpen was a habitual violator of the respondent's policies including having sexual intercourse while working on the respondent's job. The court was presented with this information in Thigpen's notebook exhibit L2<sup>10</sup> also presented in the petitioner's 7/05/05 pleading. Countless of exhibits, affidavits depositions statements from senior WRSC management staff against Ralph Thigpen's distasteful behavior. Yet, the decision to terminate the minority pro se was directly related to the animus directed against him from Thigpen, Botnick, Dave Olson, Seaborn Warren, and WSRC Human Resources senior manager William Sokolo. The Petitioner pleadings specifically identified that the respondent actions to terminate his employment is unrelated to his work performance and managers familiar with the 'system' used that familiarity to manipulate the process used and inappropriately built a systematic process to carry out their plan. **Material of fact:** The respondent counsel never **classified or clarified** the petitioner absences because the WSRC employment personnel manual allows for time off in various sections such as policy 2.12, 2.24, 2.19, 2.23, 3-3, ...etc when approved by management. The questions then becomes was the petitioner absences approved, granted, and excused by the respondent? Because the respondent supervision was for years violating their own policies regarding attendance and the facts to the record shows that

WSRC management was approving the petitioner's time off from work under the provisions in the employees handbook, but still writing a consequence for their approval against the plaintiff is what the respondent counsel and the courts is trying to suppress. For this reason, the respondent counsel omitted these points from the statement of uncontested facts.

### **REASONS FOR GRANTING THE PETITION**

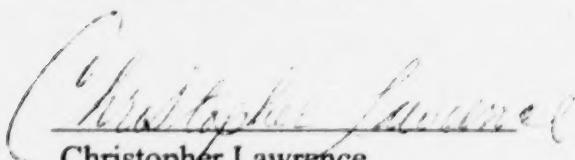
The minority Pro se prays that equal and non bias consideration to this Writ on Certiorari be granted for the following mentioned above and the lower courts usage of facts outside of where the determination was to come from. The Trial Court and Court of Appeals decisions conflict with previous holdings involving cases with the same fact patterns. Errors in biasing and profiling Pro se's and minorities violate the constitution for equality, civil rights, and equal fairness. The minority Pro se substantive right guaranteed under the Constitution have been abridged by the Magistrate, Trial Court and Appeals Court treatment toward black Pro se's. Trial Court and Court of Appeals have departed from the laws that govern questions for jury and jury instructions in the issues involving contracts and the at will common law cases. Allowances under current judicial misconduct rules violates the office and constitutionally which it servers, allowing judges to be totally wrong in decision and opinion but untouchable for accountability hiding behind the merits of a ruling statute.

The Pro se material of facts versus the legal status of Judges who know the law is now the essence of the case. As pointed out in the text the importance of this review on the plaintiff's Writ structures how non lawyers who are minority Pro se's material of facts are considered and how cases with similar fact patterns must be followed regardless who is

## CONCLUSION

The petition for a writ of certiorari should be granted for reasons mentioned herein the case style above. The petitioner seeks the lawful opportunity to have a fair hearing on appeal from the Fourth Circuit to review whether the Magistrate violated his Order and acted as an advocate. The petitioner seeks a fair hearing against the biasing and profiling of minority petitioner that abridged his civil and equal rights under the United States Constitution by the District and Appeals Court in not considering facts to the record. The petitioner seeks further to show the Rules protecting a judge's decision is unconstitutional when grossly abridges procedural due process. The petitioner seeks further the opportunity under the United States Constitution and South Carolina Law governing common law and employment at-will statutes the right to a fair hearing on the issues that are in dispute regarding contract employment applications.

Respectfully submitted,

  
Christopher Lawrence  
Pro se Petitioner  
2740 Highpoint Road  
Snellville, Ga. 30078  
(678) 344 - 4518

Date: January 10, 2006

# **APPENDICES**

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**JUDGMENT**

Filed: August 23, 2005

**UNITED STATES COURT OF APPEALS**

for the  
Fourth Circuit

No. 05 -1506  
CA- 03 - 484 - RBH

**CHRISTOPHER LAWRENCE**  
Plaintiff – Appellant

v.

**WESTINGHOUSE SAVANNAH RIVER COMPA**  
Defendant – Appellee

---

Appeal from the United States District Court for the  
District of South Carolina at Aiken

---

In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

A certified copy of this judgment will be provided to the District Court upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

“s/ Patricia S. Connor”  
Patricia S. Connor  
CLERK

**APPENDIX A**

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 05-1506

CHRISTOPHER LAWRENCE,

Plaintiff – Appellant

versus

WESTINGHOUSE SAVANNAH RIVER COMPANY LLC,

Defendant – Appellee

---

Appeal from the United States District Court for the District of South Carolina, at Aiken. R. Bryan Harwell, District Judge .  
(CA-03-484-RBH)

Submitted: August 18, 2005

Decided: August 23, 2005

---

Before WIDENER, WILLIAMS, and MICHAEL, Circuit Judges.

---

Affirmed by unpublished per curiam opinion.

APPENDIX A

Christopher Lawrence, Appellant Pro Se. Charles Franklin Thompson, Jr., MALONE, THOMPSON & SUMMERS, L.L.C., Columbia, South Carolina for Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Christopher Lawrence appeals a district court judgment adopting a magistrate judge's report and recommendation, granting summary judgment to Westinghouse Savannah River Company LLC and dismissing Lawrence complaint. We have reviewed the record and the district court's order and affirm for the reasons cited by the district court. See Lawrence v. Westinghouse, No. CA-03-484-RBH (D.S.C. Apr. 4, 2005). We deny Lawrence's motion to strike the Appellee's informal brief. We dispense with oral argument because the facts and legal contentions are adequately presented in the material before the court and argument would not aid the decisional process.

AFFIRMED

**APPENDIX A**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

Lewis F. Powell Jr. United States Courthouse Annex  
1100 E. Main Street, Suite 501  
Richmond, Virginia 23219-3517

[www.ca4.uscourts.gov](http://www.ca4.uscourts.gov)

Patricia S. Connor  
Clerk

July 12, 2005

Telephone  
(804) 916-2700

**CONFIDENTIAL**

Mr. Christopher Lawrence  
2740 Highpoint Rd.  
Snellville, GA 30078

**No. 05-9024, In the Matter of a Judicial Complaint  
Under 28 U.S.C. § 351**

Dear Mr. Lawrence:

Enclosed is a copy of an order dismissing your judicial complaint.

You have the right to petition the Fourth Circuit Judicial Council for review of this order. If you choose to file a petition for review, your petition must be filed in the clerk's office **no later than August 11, 2005**. See Rule 6 of the *Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct and Disability*.

Yours truly,  
"s/ Patricia S. Connor"  
Patricia S. Connor

PSC:ler

Enclosure

cc: Honorable Joseph F. Anderson, Jr.  
Honorable George C. Kosko  
Mr. Samuel W. Phillips

APPENDIX A

## **APPENDIX B**

### **UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

Filed  
July 12 2005  
U.S. Court of Appeals  
Fourth Circuit

In the Matter of a  
Judicial Complaint No. 05-9024  
Under 28 U.S.C. § 351

#### **MEMORANDUM AND ORDER**

This complaint is brought pursuant to 28 U.S.C. §351(a), which provides an administrative remedy for “conduct prejudicial to the effective and expeditious administration of the business of the courts” and for judicial inability to “discharge all the duties of office by reason of mental or physical disability.”

Complainant brings this judicial misconduct complaint against the magistrate judge to whom complainant’s civil case was assigned for a report and recommendation. Complainant contends that the magistrate judge unfairly favored defense counsel over Him in the conduct of proceedings. Complainant alleges that the Magistrate judge was consistently lenient in the

## **APPENDIX B**

application of the procedural rules to defendant's counsel while holding Complainant, an African-American pro se litigant, to a more exacting standard. In support of this allegation, complainant sets forth seven items which defense counsel allegedly misstated or mischaracterized in defendant's statement of undisputed facts. Complainant contends that the magistrate judge should have sanctioned counsel for these misstatements or mischaracterizations. Complainant contends that the magistrate judge's failure to act demonstrates the respondent judge's bias. Complainant alleges that the magistrate judge invited defendant's counsel to file a motion for summary judgment. He states that the magistrate judge improperly treated his exhibits as pro se motions and ignored his repeated discovery requests. Complainant alleges that after the magistrate judge allowed Defendant's counsel to misstate the facts without penalty, the magistrate judge then relied upon some of defendant's misstatements in his resolution of the case. Complainant also contends that the magistrate judge ignored some of his materials and relied instead non disputed material produced by the defendant. Complainant identifies sixteen alleged errors committed by the magistrate judge in his conduct of proceedings and his preparation of the report and recommendation. Complainant's list includes, *inter alia*, allegations that the magistrate judge drew legal conclusions from disputed material, usurped questions properly presented to a jury, relied upon partial truths presented by defendant, improperly aligned himself with defendant's position, misread and misapplied case law, made untrue and false statements in his report and recommendation, speculated on certain factual matters, referenced material never served upon complainant, and relied upon misinformation provided by defendant. Complainant has submitted an exhibit volume of materials in support of his judicial misconduct complaint. He contends these materials establish that the magistrate judge failed to

## APPENDIX B

perform his judicial duties in complainant's case impartially and diligently. Complainant's allegations concerning defendant's counsel are beyond the scope of the judicial misconduct statute and must be dismissed for failure to state a claim. 28 U.S.C. § 352(b) (1) (A) (i). See Rule 4(c) (1), Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct and Disability.

Complainant's claims of favoritism, bias and unequal treatment are not supported with any convincing evidence, and review of the district court record provides no support for complainant's allegations of biased or unfair treatment. Such conclusory allegations must be dismissed because they lack sufficient evidence to raise an inference that misconduct has occurred. 28 U.S.C. § 352 (b) (1) (A) (iii).

See *In re Doe*, 2 F. 3d 308, 311 (8<sup>th</sup> Cir. Jud. Council 1993); Rule 4 (c) (3), Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct and Disability.

The bulk of complainant's allegations are directly related to the merits of the magistrate judge's orders and rulings. Complainant's claims concerning the magistrate judge's alleged misstatement of facts, errors of law, use of disputed material, and abuse of discretion are all directly related to the merits of the magistrate judge's decisions and procedural rulings and are not the proper subject of a judicial complaint. Rather, such Claims must be raised through the usual judicial review Processes. 28 U.S.C. § 352 (b) (1) (A) (ii); Rule 4 (c) (2). Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct and Disability; *In re Charge of Judicial Misconduct*, 685 F.2d 1226 (9<sup>th</sup> Cir. Jud. Council 1982). Complainant has raised and preserved these claims, both before the district judge who reviewed and

## APPENDIX B

adopted the magistrate Judge's report and recommendation and in a pending appeal currently before this Court from the district court's grant of summary judgment.

Accordingly, this complaint is dismissed pursuant to 28 U.S.C. § 352 (b) (1) (A) (i) for failure to state a claim, (A) (ii) as directly related to the merits of a judicial proceeding, and (iii) as lacking sufficient evidence to raise an inference that misconduct has occurred.

IT IS SO ORDERED.

"s/ William W. Wilkins"  
William W. Wilkins  
Chief Judge  
UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

APPENDIX B

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## APPENDIX C

### UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA AIKEN DIVISION

#### JUDGEMENT IN A CIVIL CASE

Christopher Lawrence

vs

Westinghouse Savannah River Company, Inc

Case Number 1:03-484-RBH-GCK

[X] **Decision by Court.** This action came to hearing before the Court, the Honorable R. Bryan Harwell, US District Judge, presiding. The Court having adopted the Report and Recommendation of US Magistrate Judge George C. Kosko, granting the defendant's motion for summary judgment,

**IT IS ORDERED AND ADJUDGED** that summary judgment is entered in favor of the defendant, Westinghouse Savannah River Company, Inc. The plaintiff, Christopher Lawrence, shall take nothing of the defendant, Westinghouse Savannah River Company, Inc, and this action is dismissed with prejudice.

LARRY W. PROPS, Clerk

By: s/Charles L. Bruorton  
Deputy Clerk

April 4, 2005

APPENDIX C

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION

Christopher Lawrence, Plaintiff

v

Westinghouse Savannah River Company, Inc., Defendant

Civil Action No.:1:03-484-27

**ORDER GRANTING  
SUMMARY JUDGMENT**

**Procedural History**

In this matter, the plaintiff, a resident of Georgia and Illinois acting *pro se*, filed an action in the Court of Common Pleas, Aiken County, South Carolina, alleging breach of contract and retaliatory discharge stemming from his termination from employment with the defendant. The defendant removed the action to this court on February 12, 2003 on the basis of diversity jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441 and supplemental jurisdiction pursuant to 28 U.S.C. § 1331. Defendant filed its motion for summary judgment and supporting memorandum of January 5, 2004.

This matter is now before the undersigned for review of the Report and Recommendation ("the Report") filed by United States Magistrate Judge George C. Kosko to whom this case had previously been assigned pursuant to 28 U.S.C. § 636 and Local Rule 73.02(B)(2)(g). In his Report, Magistrate Judge Kosko carefully considers the issues and recommends that the defendant's motion for summary

**APPENDIX C**

judgment be granted. Plaintiff filed objections to the Report on August 5, 2004. Defendant filed a reply on August 17, 2004. Plaintiff filed a response on August 25, 2004, as well as two letters filed September 8, 2004 and November 15, 2004. In his objections the plaintiff accuses the Magistrate Judge of being partisan and an advocate for the defendant. The plaintiff disputes many of the factual allegations in the Report and asserts that it is an issue for the jury as to what documents are relevant to his employment relationship with the defendant.

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections.... The Court is not bound by the recommendation of the Magistrate judge but, instead, retains responsibility for the final determination. The Court is not required to review, under a *de novo* or any other standard, the factual report and recommendation to which no objections are addressed. While the level of Scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Courts is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

*Wallace v. Housing Auth. of the City of Columbia*, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

### Facts

The court agrees with the factual and procedural background as set forth by the Magistrate Judge in his Report and Recommendation. The court therefore adopts the Magistrate Judges's version of the facts in this case to the extent such facts are not specifically included herein.

### APPENDIX C

The plaintiff was hired by the defendant Westinghouse Savannah River Company, LLC ("Westinghouse") in 1989. Westinghouse assumed the interests of Dupont Corporation and took over management of the Savannah River Site in 1989. The defendant operates the Savannah River Site under a contract with the United States Department of Energy ("DOE").

The defendant's contract with the DOE requires the defendant to establish local policies, including personnel policies. The defendant has a personnel policy manual called the 5B Manual.

The defendant uses a system of "contacts" to document some interactions between supervisors and subordinates. These contacts can include disciplinary contacts and can be used to document something positive an employee has done or to caution an employee about a management concern. Other types of disciplinary action used by the defendant include suspension, probation, final employee commitment, and termination.

On August 30, 2001, the defendant terminated the plaintiff due to plaintiff's "excessive absenteeism, failure to correct excessive absenteeism, insubordination, and failure to follow policies and instructions given by management in connection with attempts by management to correct his absenteeism."

(Defendant's Responses to LCR 26.03 at ¶ 1). The effective date of plaintiff's termination was August 31, 2001. On September 1, 2001, plaintiff was escorted out of defendant's site by security personnel.

On July 19, 2002, plaintiff filed a charge of discrimination with the EEOC. On September 13, 2002, the EEOC issued a

#### **APPENDIX C**

Notice of Right to Sue Letter. Subsequently, plaintiff the instant action in which he alleges two (2) causes of action: "Count (1)-Wrongful Termination," in which he alleges a breach of policies or procedures in the 5B manual, and "Count (2)-Retaliatory Discharge."

Defendant filed its motion for summary judgment pursuant to Rule 56, Fed. R. Civ. P arguing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.

#### Legal Standard for Summary Judgment

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P.56(c). The moving party has the burden of proving that judgment on the pleading is appropriate. Once the moving party makes the showing, however, the opposing party must respond to the motion with "specific facts showing there is a genuine issue for trial." Fed.R.Civ.P.56(e).

When no genuine issue of any material fact exists, summary judgment is appropriate. *Shealy v. Winston*, 929 F.2d 1009,1011 (4<sup>th</sup> Cir. 1991). The facts and inferences to be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Id.* However, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

In this case, defendant "bears the initial burden of point to the absence of a genuine issue of material fact." *Temkin v.*

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*Frederick County Commrs*, 845 F.2d 716, 718 (4<sup>th</sup> Cir. 1991) (citing *Celotex Corp v. Catrett*, 477 U.S. 317,322, (1986). If defendant carries this burden, "the burden then shifts to the non-moving party to come forward with fact sufficient to create a triable issue of fact." *Id.* at 718-19 (citing *Anderson*, 477 U.S. at 247-48).

Moreover, "once the moving party has met its burden, the nonmoving party must come forward with some evidence beyond the mere allegations contained in the pleadings to show there is a genuine issue for trial." *Baber v. Hosp. Corp. of Am.*, 977 F.2d 872, 874-75 (4<sup>th</sup> Cir. 1992). The nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment. *Id.* and *Doyle v. Sentry, Inc.*, 877 F. Supp. 1002, 1005 (E.D. Va.1995). Rather, the nonmoving party is required to submit evidence of specific facts by way of affidavits (see Fed R. Civ. P.56(c), depositions, interrogatories, or admissions to demonstrate the existence of a genuine and material factual issue for trial. *Baber*, 977 F.2d 872, citing *Celotex Corp* .. *supra*. Moreover, the nonmovant's proof must meet "the substantive evidentiary standard of proof that would apply at a trial on the merits." *Mitchell v. Data Gen. Corp.*, 12 F.3d 1310, 1316 (4<sup>th</sup> Cir.1993); *Deleon v. St. Joseph Hosp., Inc.*, 871 F.2d 1229, 1223 n. 7 (4<sup>th</sup> Cir. 1989). Unsupported hearsay evidence is insufficient to overcome a motion for summary judgment. *Martin v. John W. Stone Oil Distrib., Inc.*, 819 F.2d 547 (5<sup>th</sup> Cir.1987); *Evans v. Techs. Applications & Servs. Co.*, 875 F. Supp.1115 (D.Md.1995).

#### Factual Allegations

The plaintiff alleges that the Magistrate Judge improperly included disputed material from the defendant's summary judgment motion into the Report. On June 14, 2004, the Magistrate Judge held a status conference in this case and

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ordered the plaintiff and the defendant to jointly prepare a statement of uncontested facts. The parties agreed to a "Statement of Uncontested Facts" which was filed on June 18, 2004. Also on that date, the plaintiff filed a Notice of Disputed Facts and the defendant filed its Notice of Contested Facts. What the plaintiff does not appear to realize is that the Magistrate Judge could determine that a fact was uncontested despite Lawrence's refusal to include that fact in the statement of uncontested facts if, for example, the fact was admitted plaintiff in his deposition.

The plaintiff also complains that his early employment history was recited in the Report. This material was nothing more than background to help the reader understand the events that led to the plaintiff's discharge. Plaintiff appears to claim personal bias and animosity on the part of defendant's management, and particularly Supervisor Thigpen, against the plaintiff. He further appears to maintain inaccuracy in the background history, reasons, or facts that led up to his eventual termination. Even assuming there was personal bias by Thigpen or others, and assuming inaccuracy in the reasons given for the termination, the question is: Was the at-will employment relationship of the parties altered or modified by an employee handbook under South Carolina common law?

### Breach of Contract

The plaintiff contends that the 5B Manual, the DOE agreement with defendant, and other parts of the defendant's Operating and Procedures Manuals are part of the employment relationship and that he is entitled to have a jury determine what documents are relevant to the employment relationship. While plaintiff alleges the entire "5B Manual policies and practices, 8Q Manual policies and practices, 5Q Manual, policies and practices, Rules of Conduct and Department of

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Energy Contract No. DE-AC09-96SR18500 set forth and gives rise to a binding obligation of performance that by the very nature establishes a unilateral employment contract" (Plaintiff's Response to Defendant's Position Regarding Plaintiff's Objections p. 2), he testified in his deposition that he specifically relied only on provision 2.9 of the Manual to establish his breach of contract claim. *See* Deposition of Christopher Lawrence pp132-139.

The general rule in South Carolina is that employment is "at will," and employees or their employers may end the employment relationship at any time, for any reason, or for no reason at all. *Small v. Springs Industries*, 388 S.E.2d 808, 810 (S.C.1990) (*Small I*). The South Carolina Supreme Court has recognized that an employee handbook can modify an at-will employment relationship. *Small v. Springs Industries*, 357 S.E. 452(1987) (*Small II*). This exception to the at-will employment rule is based on unilateral contract theory. *Id.* In order for a handbook promise to alter the at-will employment relationship, a handbook promise must not only exist, but an employee must know that it exists. *Small I*, 357 S.E. 2d at 454. However, in *Small I*, the handbook and related bulletin provided for a four-step disciplinary process given before discharge. *Id.* at 453.

Therefore, it would appear that the plaintiff must direct the court to some particular provision he claims was violated that limited the employer's right to discharge him.

Additionally, the handbook promise must restrict the right of an employer to discharge. *See Bookman v. Shakespeare*, 444 S.E.2d 183 (S.C.Ct. App. 1994). In *Prescott v. Farmers Telephone Co-op., Inc.*, 491 S.E.2d 698, 702 (S.C.Ct. App.1997) (rev'd on other grounds 516 S.E.2d 923 (S.C.1999)), the court held that since the plaintiff could not

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direct the court to any language in the handbook promising pre-termination warnings or other procedures there was no limit to the employer's right to discharge and, therefore, no modification of the employee's at-will employment. In that case, the handbook listed types of conduct that could result in discipline and stated that employees could have the termination decision reviewed by higher levels of management. The court held that the listing of conduct that could result in discipline, without promising a certain procedure before discipline, did not limit the right to discharge. *See also, Epps v. Clarendon County*, 405 S.E. 2d 386 (S.C.1991).

In his objections the plaintiff has failed to allege a handbook policy or promise that he is entitled to something related to discharge. The plaintiff complains that the defendant's doctor and his supervisors who reviewed his medical absences were biased and they unfairly tried to force him back to work during a medical-related absence. This argument is irrelevant, because Lawrence is an at-will employee, unless he can show a contractual promise not to terminate him if he had an excuse for not returning to work or a promise not to terminate him if his supervisor did not like him or was biased against him. Plaintiff has presented no evidence of such promise so there is no relevant question of fact.

Similarly, the plaintiff argues that various post-termination procedures described in policy 2.9 were violated.<sup>1</sup> For example, he asserts that he was denied a post-termination exit interview and that his discharge was not approved by the president of Westinghouse. However, as the Magistrate Judge pointed out in his Report, the exit interview and the approval were post-termination procedures that did not restrict

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the defendant's right to discharge. The plaintiff argues that the president of Westinghouse did not approve his termination because the president did not sign the termination document. Westinghouse submitted an affidavit that its president did approve the termination through his designee. Lawrence claims this affidavit is false, but offers no evidence of falsity beyond a blanket allegation. Regardless, the president's approval, or that of his designee, is a post-termination procedure rather than a pre-termination procedure. *See Prescott*, 491 S.E. 2d at 702-703.

For the first time in his Objections, Lawrence refers to a policy not mentioned before, policy 2.7. Plaintiff now claims that this policy has been violated, but does not explain how it has been violated. Lawrence was questioned at length about which policies he thought formed a contract and which ones he thought were not followed. Other than policy 2.9, Lawrence testified in his deposition that he did not know of any other policies that were violated. Lawrence cannot not create an issue of fact by contradicting his own sworn testimony.

*See, e.g., Hernandez v. Trawler Miss Vertie Mae, Inc.*, 187 F. 3d 432, 438 (4th Cir. 1999); *Barwick v. Celotex Corp.*, 736 F. 2d 946, 960 (4th Cir. 1984).

### Retaliatory Discharge

In his objections, the plaintiff states: "The Court characterizes this claim as a retaliation claim which is not what the Plaintiff argues; he does not assert that he was fired because of his race or because he was a 'whistleblower' or because he was engaging in some particular activity." (Objections p. 33). The Court therefore assumes plaintiff is

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not asserting or is abandoning this claim, but even if the plaintiff is not asserting or is abandoning his retaliatory discharge claim, this court finds that the plaintiff cannot establish the elements of a retaliation claim.

A Title VII retaliation claim is properly analyzed under the framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under this framework, a plaintiff must set forth a *prima facie* case of intentional discrimination. To establish a *prima facie* case for retaliation, a plaintiff must show (1) that he engaged in a protected activity, (2) defendant took adverse employment action against him, and (3) a causal connection existed between the protected activity and the adverse action. *Matvia v. Bald Head Island Mgmt., Inc.*, 259 F. 3d 261, 271 (4th Cir. 2001); *Ross v. Commun. Satellite Group*, 759 F. 2d 355, 365 (4th Cir. 1985). Once the plaintiff has established a *prima facie* case the burden shifts to the defendant to produce a legitimate, nondiscriminatory reason for the termination. *Texas Dept. of Community Affairs*, 450 U.S. at 254. Once the defendant has satisfied that burden, the burden shifts back to the plaintiff to demonstrate by a preponderance of the evidence that the reasons stated by the defendant were not its true reasons, but were pretext for discrimination. *Reeves*, 530 U.S. at 143.

### ***Prima Facie Case***

In the instant case plaintiff cannot establish a *prima facie* case because he cannot satisfy the first requirement. The plaintiff describes himself as a “well educated, outspoken African American” who “often spoke-out [sic] on issues” and “advised other employees [of the defendant] of their rights and obligations under the Procedural Manual.” (Complaint at ¶¶ 17-19). Plaintiff asserts that the retaliatory termination was a

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result of his exercise of “[t]he right to speak out” and “[t]he right to own your own business.” (Complaint at ¶¶ 26-27).

Under the controlling statutory language, protected activities fall into either the opposition clause or the participation clause. *See Kubicko v. Ogden Logistics Services*, 181 F. 3d 544, 551 (4<sup>th</sup> Cir. 1999). (making it unlawful to discriminate against an employee because he opposed illegal employment practices or because he made a charge). The Fourth Circuit Court of Appeals has said that “[o]pposition activity encompasses utilizing informal grievance procedures as well as staging informal protests and voicing one’s opinions in order to bring attention to an employer’s discriminatory activities.” *Id.* In the present case, plaintiff cannot satisfy the first prong of his retaliation claim because he cannot show that he engaged in any statutorily protected oppositional or participatory activity.

### **Legitimate, Nondiscriminatory Reason for Termination**

As discussed more fully above and in the Report, even if the plaintiff could establish a *prima facie* case, the defendant has articulated a nondiscriminatory reason for terminating the employee and the plaintiff has failed to establish that the reason is false and pretextual.

To the extent the plaintiff is not claiming a Title VII retaliatory discharge, and instead the plaintiff is attempting to claim retaliatory discharge under South Carolina common or statutory law, his claim also fails. While South Carolina common law recognizes that an at-will employee cannot be discharged for a reason that violates public policy, *Ludwick v. This Minute of Carolina, Inc.*, 337 S.E. 2d 213 (1985); no allegation of a violation by the employer of some clear mandate of public policy is made by the plaintiff.

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"The 'public policy' violation requirement by the doctrine is not an open-ended concept but is restricted to violations which contravene the clear mandate of public policy 'within the penal sphere.'" *Merck v. Advance Drainage Systems, Inc.*, 921 F. 2d 549 (4th Cir. 1990) (citing to *Ludwick*).

### **Conclusion**

I find as a matter of law that there are no issues of material fact and defendant is entitled to summary judgment as to plaintiff's claims.

For the foregoing reasons, the undersigned adopts and incorporates the Report and Recommendation of the Magistrate Judge and **Grants** the defendant's motion for summary judgment.

### **AND IT IS SO ORDERED**

s/ R. Bryan Harwell

R. Bryan Harwell

March 31, 2005

United States District Court Judge

Florence, South Carolina

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**In The District Court of the United States  
For the District of South Carolina  
AIKEN DIVISION**

**LARRY W. PEOPLES, CLERK  
CHARLESTON, SC**

**FILED  
JUL 19 2004**

**ENTERED  
07-19-04**

**Civil Action  
No. 1:03-484-26BG**

**CHRISTOPHER LAWRENCE, Plaintiff,**

**v**

**WESTINGHOUSE SAVANNAH RIVER COMPANY LLC  
Defendant**

**REPORT AND RECOMMENDATION  
OF THE MAGISTRATE JUDGE**

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21A**

## **I. INTRODUCTION**

The Plaintiff, Christopher Lawrence ("Plaintiff or "Lawrence"), a resident of Georgia and Illinois, acting pro se, filed this action in Court of Common Pleas for Aiken County on January 14,2003 against Westinghouse Savannah River Company LLC ("Defendant") for breach of contract and retaliatory discharge stemming from his termination from employment with the Defendant.<sup>1</sup>

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<sup>1</sup> See Complaint, attached to Notice of Removal. [1-1] Although the pro se Complaint enumerated the causes of action as (1) wrongful termination and (2) retaliatory discharge, contained within the first cause of action was an action which this Court reads as one for breach of contract based upon the Defendant's pro se Complaint. On July 19,2002, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging that he was "singled out and retaliated against because [he is] an outspoken person" and is Black, and the Defendant's actions were in violation of his rights under Title VII of the Civil Rights Act of 1964, as amended. See Defendant's Motion for Summary Judgment at Exhibit 37. Despite this statement, Plaintiff has represented to the Court that he is not alleging that the instant action is based on racial discrimination. On June 23, 2004, the undersigned issued an Order to Plaintiff posing the following question: "Is the plaintiff claiming an action based on racial discrimination?" [66-1] On June 30,2004, the Plaintiff returned the Order, stating that he was not claiming that his action was based on racial discrimination. [68-1] This was a crucial issue to the case, as it was unclear whether Plaintiff was pursuing a claim under the Civil Rights Act or under state laws. If Plaintiff were pursuing an action under the Civil Rights Act, such action would have been barred by the applicable statute of limitations. Under Title VII of the Civil Rights Act of 1964, a prerequisite to filing a lawsuit claiming racial discrimination is to file a charge of discrimination with the EEOC or the state agency equivalent. This charge must be filed within 300 days of the alleged discriminatory act. 42 U.S.C. § 2000e-5(e)(1). Following the EEOC's conclusion of its investigation, a lawsuit must be filed within 90 days of the receipt of an EEOC right to sue letter. 42 U.S.C. § 2000e-5(f)(1). Plaintiff was terminated on August 29,2001. Plaintiff filed his charge of discrimination on July 19,2002, approximately 350 days after his termination and accordingly, his charge was not timely filed.

The EEOC issued a notice of right to sue on September 13, 2002. Plaintiff testified that he received the notice in September. (See Defendant's Motion for Summary Judgment at Tab 1, Lawrence Dep. at p. 147). The EEOC had issued its Dismissal and Notice of Rights on September 13, 2002, (see Defendant's Motion for

The Defendant timely removed this action to the United States District Court for the District of South Carolina.<sup>2</sup> [1-1] This Court has diversity jurisdiction of this matter pursuant to 28 U.S.C. §§ 1332 and 1441, and supplemental jurisdiction pursuant to 28 U.S.C. § 1337. Venue is proper because the events at issue occurred in this District and Division. 28 U.S.C. § 1331.

Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(e), D.S.C., the undersigned United States Magistrate Judge is authorized to review all pretrial matters involving litigation by individuals proceeding pro se and submit findings and recommendations to the District Court.

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Summary Judgment at Tab 36) which stated: "You may file a lawsuit against the respondents under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this Notice; otherwise, your right to sue based on this charge will be lost." (Emphasis and capitalization in the original). In the present case, Plaintiff filed this action on January 14, 2003 in State Court; which is, by this Court's count, one hundred twenty-three days after the EEOC issued the Dismissal and Notice of Rights and therefore well after the expiration of the ninety-day statute of limitations contained in the EEOC's Dismissal and Notice of Rights. Accordingly, had Plaintiff pursued his lawsuit under the theory articulated in the Charge of Discrimination, his suit based upon those grounds would not have been timely filed. See 42 U.S.C. § 2000e.

2 Defendant's Notice of Removal construed the Complaint as alleging "a claim under Title VII of the Civil Rights Act of 1964." [1-1] Nevertheless, as discussed supra in n.1, the Plaintiff subsequently advised the Court that he does not claim an action based on racial discrimination. [68-1]

## **II. PRO SE COMPLAINT**

Plaintiff is a pro se litigant, and thus his pleadings are accorded liberal construction. Hughes v. Rowe, 449 U.S. 5, 8 (1980), per curiam; Estelle v. Gamble, 429 U.S. 97 (1976); Haines v. Kerner, 404 U.S. 519 (1972); Loe v. Armistead, 582 F.2d 1291 (4<sup>th</sup> Cir. 1978); Gordon v. Leeke, 574 F.2d 1147 (4<sup>th</sup> Cir. 1978).

The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented. Barnett v. Hargett, 174 F.3d 1128 (10<sup>th</sup> Cir. 1999). Likewise, a court may not construct the plaintiffs legal arguments for him(Small v. Endicott, 998 F.2d 411 (7<sup>th</sup> Cir. 1993)) or "conjure up questions never squarely presented" to the court. Beaudett v. City of Hampton, 775 F.2d 1274,1278 (4<sup>th</sup> Cir. 1985), cert, denied, 475 U.S. 1088 (1986).

## **III. PROCEDURAL HISTORY**

After the Defendant removed this case to federal court, the parties engaged in extensive discovery. After several hearings regarding discovery matters, on January 5, 2004 the Defendant filed a Motion for Summary Judgment and a Memorandum in Support thereof ("Defendant's Motion"). [40-1; 41-1] Thereafter, Plaintiff filed a Response to Defendant's Motion, as well as several supplemental amendments to his Response. [44-1; 45-1; 47-1; 48-1] The Defendant opposed these supplemental responses to summary judgment and also filed a reply. [49-1; 50-1] On March 2, 2004, the Plaintiff responded to Defendant's pleading. [52-1] Subsequently, Plaintiff asked leave of the Court to file additional material in opposition to Defendant's Motion. [55-1]

This case was mediated unsuccessfully in April 2004. On May 7, 2004 Plaintiff filed a "Dismissal without Prejudice" [56-1] which this Court construed as a Motion to Dismiss Without Prejudice pursuant to Fed.R.Civ.P. 41(a)(1). The Defendant

responded on May 17, 2004, asserting that it did not consent to dismissal of the action. [57-1] On May 25, 2004 the Plaintiff filed a "Supplemental Brief in Opposition to Defendant's Motion for Summary Judgement" which set forth additional arguments in opposition to Defendant's Motion. In that document, Plaintiff withdrew his motion for a voluntary dismissal, conceding that his pleading was in violation of Rule 41 of the Federal Rules of Civil Procedure. [58-1]

On June 14, 2004, the undersigned United States Magistrate Judge held a status conference in this case and ordered the Plaintiff and the Defendant to jointly prepare a statement on uncontested facts. The parties participated in the composition of a "Statement of Uncontested Facts" which was filed on June 18, 2004. [64-1] Also on that date, the Plaintiff filed a Notice of Disputed Facts [62-1] and the Defendant filed its Notice of Contested Facts. [63-1] The Defendant also filed a reply to Plaintiffs Notice of Disputed Facts. [65-1]

On June 23, 2004, the undersigned issued an Order directing the Plaintiff to answer one question, viz., "Is the Plaintiff claiming an action based on racial discrimination?" [66-1] On June 30, 2004, the Plaintiff answered "No" to this question. [68-1] On July 2, the Plaintiff filed another memorandum in opposition to Defendant's Motion, [69-1] and the Defendant filed its reply on July 7. [70-1] As the Defendant has moved for summary judgment as to all claims, and the pro se Plaintiff has filed a number of responses, the issues have been thoroughly briefed, and the matter is ripe for a Report and Recommendation.

#### **IV. FACTUAL BACKGROUND**

The facts, either uncontested or taken in the light most favorable to the Plaintiff as the non-moving party, and all reasonable inferences therefrom, to the extent supported by the record, are as follows:

Plaintiff was first employed by Defendant in 1989,<sup>3</sup> at which time he was given two years' service credit for his prior employment with Morrison-Knudsen.<sup>4</sup> Defendant assumed the

interests of Dupont Corporation when Defendant took over management of the Savannah River Site (the "SRS") in 1989.<sup>5</sup>

The Defendant operates the SRS under a contract with the United States Department of Energy (the "DOE").<sup>6</sup>

The Defendant's contract with the DOE requires Defendant to establish local policies, including personnel policies.<sup>7</sup> The Defendant has a personnel policy manual called the 5B manual.<sup>8</sup> The Defendant uses a system of "contacts" to document some interactions between supervisors and subordinates. These can include disciplinary contacts and can be used to document something positive the employee did or to caution an employee about a management concern.<sup>9</sup> Other types of disciplinary action used by Defendant include suspension, probation, final employee commitment, and termination.<sup>10</sup>

In 1988, Plaintiff was absent from work for a "bunionectomy." He informed his supervisor he would be out of work for eight (8) weeks.<sup>12</sup> The Defendant's medical department felt that eight weeks was excessive and advised Plaintiff to bring in a doctor's note.<sup>13</sup> The note Plaintiff brought in contained work restrictions but did not address the issue of return to work.<sup>14</sup>

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<sup>3</sup> See Statement of Uncontested Facts [64-1] (hereinafter "Facts") at ¶ 1.

<sup>4</sup> See Facts at ¶ 2.

<sup>5</sup> See Facts at ¶ 3.

<sup>6</sup> See Facts at ¶ 4.

<sup>7</sup> See Facts at ¶ 6.

<sup>8</sup> See Facts at ¶ 6. The only portion of the manual that has been entered into evidence is Policy 2.9, which is set forth in Defendant's Motion for Summary Judgment [40-1] at Tab 38.

<sup>9</sup> See Facts at ¶ 7.

<sup>10</sup> See Facts at ¶ 8.

<sup>11</sup> See Facts at ¶ 9.

<sup>12</sup> See Facts at ¶ 10.

<sup>13</sup> See Facts at ¶ 11.

<sup>14</sup> See Facts at ¶ 12.

Plaintiff also asserted he should not be expected to come to work because he could not drive a manual transmission in a car<sup>15</sup> In 1989, Plaintiff was warned for failing to let his supervisors know he would be absent from work.<sup>16</sup> Also in 1989, Plaintiffs performance appraisal warned him that his attendance needed to improve.<sup>17</sup>

In 1991, Plaintiff was warned that further absences would result in discipline and at the end of 1991 he was warned that his absences were excessive.<sup>18</sup>

In June 1992, Plaintiff was warned that his attendance was below expectations, and on September 10, 1992 Plaintiff received two (2) Informative written contacts: one related to Plaintiffs failure to return to work following funeral leave, and the other related to the Defendant's development of an attendance program to assist Plaintiff in achieving the departmental goal of 97% attendance (not including vacation and holidays). In addition, Plaintiff was required to call his supervisor to report any unscheduled absence.<sup>19</sup> About a week later, on September 15, 1992, Plaintiff was issued a Corrective contact which stated in part that he had to meet or exceed the departmental goal of 97% attendance, and that a review of his performance and absenteeism would be conducted monthly for the next six months.<sup>20</sup>

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<sup>15</sup> See Facts at ¶ 13. Plaintiff has submitted documents indicating that Plaintiff owns vehicles with manual transmissions, that he had a "full cast on his driving foot" and he had informed the Defendant that he would be unable to go to work "unless they [Defendant] send somebody out here to pick me up[.]"Plaintiff See Plaintiffs Response to Summary Statement filed by [Defendant's] Counsel, Book One, Dated January 19, 2003 at Tab 41, page 2.

<sup>16</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 4.

<sup>17</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 5.

<sup>18</sup> See Defendant's Motion for Summary Judgment [40-1] at Tabs 6, 7.

<sup>19</sup> See Defendant's Motion for Summary Judgment [40-1] at Tabs 9-11.

<sup>20</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab

In 1997, Plaintiffs performance review indicated that he had exceeded his allowed absences for that year.<sup>21</sup> In 1998, Plaintiff missed about 209 hours of work and was informed of Defendant's concerns about his attendance in his annual performance review."<sup>22</sup>

In February 2000, Plaintiffs department suffered a reduction in force. Because of his seniority, Plaintiff was allowed to transfer to another division.<sup>23</sup> On April 6,2000 Plaintiff was given a warning about his attendance because Plaintiff had been late three consecutive days and had taken six short vacations within the first twelve (12) days in his new division.<sup>24</sup> By April 10, 2000, Plaintiff had exceeded the limit set by his managers on the number of absences he was allowed (40 hours not including vacation and holidays). Plaintiff was warned that further unexcused absences would result in discipline and future absences were to be limited to genuine emergencies.<sup>25</sup>

On May 10, 2000 the Defendant issued another contact which informed him that his attendance was unacceptable and that his future attendance would be subject to biweekly monitoring.<sup>26</sup>

On June 2, 2000 Plaintiff requested that he be allowed to take June 5 off due to an emergency at a factory in California that supplied ties for his local business. Defendant's management instructed all of its supervisors that they were not to give Plaintiff any more excused time off, but that the absence would be unexcused without pay.<sup>27</sup>

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21 See Defendant's Motion for Summary Judgment [40-1] at Tab 17.

22 See Defendant's Motion for Summary Judgment [40-1] at Tab 20.

23 Facts at ¶ 14.

24 See Defendant's Motion for Summary Judgment [40-1] at Tab 21.

25 See Defendant's Motion for Summary Judgment [40-1] at Tab 22.

26 See Defendant's Motion for Summary Judgment [40-1] at Tab 25.

27 See Defendant's Motion for Summary Judgment [40-1] at Tab 26.

On June 7,2000, Plaintiff became involved in a verbal confrontation with his supervisor, Seaborne Warren, which resulted in Plaintiff being warned that he should remain civil to his supervisors.<sup>28</sup> On July 28,2000, Plaintiff was absent from work to get blood work in preparation for a second bunionectomy.<sup>29</sup> When he returned to work that day, Plaintiff was excused from work because he said he was being affected by medication.<sup>30</sup> Plaintiff went out on medical leave related to his second bunionectomy on August 1, and admitted that the Defendant did not know how long Plaintiff would be out of work.<sup>31</sup> After his surgery Plaintiff did not call anyone at the Defendant because Plaintiff believed "there's nowhere in the policy that says for me to make notification every week or every day or every so often to medical."<sup>32</sup> Defendant's management, and Defendant's physician, Dr. Botnick, documented that they were concerned that Plaintiffs outside business was interfering with his employment at Defendant's facility. Dr. Botnick made comments about this in Plaintiffs employment file and medical file.<sup>33</sup> Dr. Botnick's position regarding Plaintiffs attendance was negative.<sup>34</sup>

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<sup>28</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 27.

<sup>29</sup> Facts at ¶ 5.

<sup>30</sup> Facts at ¶16.

<sup>31</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at p. 85.

<sup>32</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiffs Dep. at p. 86.

<sup>33</sup> Facts at ¶ 17.

<sup>34</sup> The word "skeptical" had been used in the agreed-upon set of Facts (at ¶8) which had been typed and filed by the Defendant. Thereafter, the Plaintiff objected to this word on the grounds that it was incorrect. [69-1] Defendant reviewed the tape of the hearing on June 18 and stated that it had inadvertently used the incorrect word and in fact, the word should be "negative". [70-1]

The week following Plaintiffs surgery, Dr. Botnick began calling Plaintiff to obtain information about Plaintiffs leave.<sup>35</sup> Dr. Botnick felt that three weeks' leave for the operation should have been more than sufficient for Plaintiff to recover.<sup>36</sup> Dr. Botnick located Plaintiffs physician and discovered that Plaintiff was going to be evaluated on September 7, 2000.<sup>37</sup> On September 11, 2000 Plaintiffs supervisor, Ralph Thigpen ("Thigpen") called Plaintiff at his home, at his mother's home, and his ex-wife's home to obtain information about his leave.<sup>38</sup> Plaintiff admitted that he was refusing to answer telephone calls from Thigpen, Dr. Botnick, and others because he did not want to talk to them<sup>39</sup> and that they were calling him "constantly".<sup>40</sup> When Thigpen reached Plaintiff, Plaintiff told Thigpen that Thigpen was not a doctor and could not instruct him to return to work without talking to his doctor.<sup>41</sup> Sometime after September 11, the Defendant received a note from Plaintiffs doctor which only listed working restrictions, but did not address whether or not Plaintiff could return to work.<sup>42</sup> It appears to the Court that a copy of this note was faxed from Plaintiffs doctor's office to the Defendant on September 12, 2000.<sup>43</sup> Dr. Botnick left several messages to the effect that Defendant expected Plaintiff to be on work on September 11, 2000.<sup>44</sup> However, Plaintiff testified that his physician had not released him for work at that time.<sup>45</sup>

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<sup>35</sup> Facts at ¶ 19.

<sup>36</sup> Facts at ¶ 20.

<sup>37</sup> Facts at ¶ 21.

<sup>38</sup> Facts at ¶ 22; see also Defendant's Motion for Summary Judgment [40-1] at Tab 28, Thigpen's notes.

<sup>39</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at pp. 93, 106.

<sup>40</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at pp. 93.

<sup>41</sup> Facts at ¶ 23.

<sup>42</sup> Facts at ¶ 24,26.

<sup>43</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 29.

<sup>44</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 30, p. 782.

<sup>45</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 1, p. 93.

Plaintiff's supervisor, Thigpen, also called Plaintiffs telephone numbers and left messages that Plaintiff was expected at work on September 11.<sup>46</sup>

On September 12, Plaintiff did not return to work.<sup>47</sup> Also on that date, Dr. Botnick spoke with Plaintiff; Plaintiff said he had not been released by his physician.<sup>48</sup>

Thigpen spoke with Plaintiff on the telephone that day and left messages for him to come to work.<sup>49</sup> Plaintiff told his supervisor, Thigpen, that he had a medical excuse until October 3.<sup>50</sup> Defendant's management wanted Defendant's human resources department to intervene at this point because management said it had pushed the issue as far as it could without guidance.<sup>51</sup> Plaintiff did not return to work until September 22, 2000<sup>52</sup> although Plaintiff testified that his physician's excuse permitted him to be out of work until October 1.<sup>53</sup> (However, it appears from the record that the only doctor's note the Defendant received was the note dated September 11, 2000.<sup>54</sup>) While Plaintiff was at work that day, his supervisor found Plaintiff sleeping. Plaintiff stated he was asleep due to medication.<sup>55</sup> On September 27, 2000, a committee consisting of eight (8) of Defendant's employees, including Dr. Botnick, Lorrie Lott (the Defendant's Principle Human Resources Representative), and Thigpen, met and recommended that Plaintiff be put on probation.<sup>56</sup>

On September 29, 2000 Plaintiff was placed on probation.<sup>57</sup>

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<sup>46</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 28.

<sup>47</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 28.

<sup>48</sup> Facts at H 25.

<sup>49</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 28.

<sup>50</sup> Facts at ¶ 27.

<sup>51</sup> Facts at ¶ 28.

<sup>52</sup> Facts at ¶ 29.

<sup>53</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiffs

<sup>54</sup> Dep. at pp. 98-99.

<sup>55</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 29.

<sup>56</sup> Facts at ¶ 30.

<sup>57</sup> Defendant's Motion for Summary Judgment [40-1] at Tab 33, p. 1.

The Defendant listed the following reasons for probation:

You continue to miss work with excuses either missing or provided with little notice. Your managers and co workers cannot execute work when team members fail to report to be at work, [sic] This behavior is contrary to [Defendant's] Rules of Conduct (Unauthorized absences and excessive excused or unexcused absences from your work assignment). Previous Informative and Corrective Contacts given to you during your SRS career have failed to improve your behavior in this regard.

Your behavior has also resulted in failure to attain satisfactory performance toward a Production Operator Qualifications. This has led to a second violation of the [Defendant's] Rules of Conduct in that your job performance is unsatisfactory.

You have repeatedly failed to meet [Defendant's] guidelines (5B Manual section 2.12.7.A) pertaining to requests for time off.

When management has contacted you to ascertain your condition and intentions you have been insubordinate in refusing to comply with their reasonable request [sic] and instructions concerning your employment status. This insubordination violates the [Defendant's] Rules of Conduct.

You have not met your responsibilities in keeping Site Medical and your management informed as to medical conditions as required by 5B Manual 2.24.<sup>58</sup>

Dr. Botnick did not review, at any time, Lawrence's personal physician's medical file, however, he did call Plaintiffs personal physician on several occasions.<sup>59</sup>

Plaintiff never gave Dr. Botnick his personal medical records.<sup>60</sup> On August 26,2001, Plaintiff called his supervisor to report he would be late due to his son's sickness.<sup>61</sup> The next day, Plaintiff called the Defendant's control room to inform Defendant he would be out for two or three additional days due to a sinus infection.<sup>62</sup> In his deposition, however, Plaintiff admitted that he was aware that he only was supposed to tell certain managers or his supervisor of absences, but he questions whether such a restriction was in keeping with the Defendant's policy.<sup>63</sup>

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58 Defendant's Motion for Summary Judgment [40-1] at Tab 33, p. 3.

59 Facts at ¶ 32.

60 Facts at 1133.

61 Facts at ¶ 34.

62 Facts at ¶ 35.

63 Defendant's Motion for Summary Judgment [40-1] at Tab 1,

Plaintiffs Dep. at p. 129.

Plaintiffs supervisor, Thigpen, reported to Defendant's management that Plaintiff had disobeyed instructions regarding whom to contact to report absences.<sup>64</sup>

Thigpen tried to call Plaintiff. Plaintiff returned the call, and Thigpen and Plaintiff had an angry conversation during which Plaintiff admits that he asked Thigpen, "Are you a dumb ass?"<sup>65</sup> Thigpen also admits to raising his voice during the conversation.<sup>66</sup> Defendant decided to terminate Plaintiffs employment.<sup>67</sup>

The Defendant terminated Plaintiffs employment due to Plaintiffs excessive absenteeism, failure to correct excessive absenteeism, insubordination, and failure to follow policies and instructions given by management in connection with attempts by management to correct his absenteeism.<sup>68</sup>

Plaintiffs termination form was dated August 30,2001, and his effective date of termination was August 31,2001.<sup>69</sup> Plaintiff was escorted out of Defendant's site by security personnel on September 1,2001.<sup>70</sup>

Defendant's internal policy 2.9 sets forth an exit interview procedure and checkout procedure, neither of which Plaintiff received.<sup>71</sup> Defendant has a document that employees have been required to sign from time to time that lists conduct that an employee can be disciplined for.<sup>72</sup> This document will be referred to herein as "Rules of Conduct."<sup>73</sup>

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<sup>64</sup> Facts at ¶ 26.

<sup>65</sup> Facts at ¶ 37.

<sup>66</sup> Facts at ¶ 37-38.

<sup>67</sup> Facts at ¶ 39.

<sup>68</sup> See Defendant's Responses to Local Rule 26.03 Interrogatories at ¶1.[9-1]

<sup>69</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 39 (Affidavit of Lorrie A. Lott, Principal Human Resources Representative for the Human Resources Policies Administration Department for the Defendant, at HH 4-5).

<sup>70</sup> Facts at ¶ [40-41].

<sup>71</sup> Facts at 46-47.7

<sup>72</sup> Facts at ¶48.

<sup>73</sup> See Plaintiffs Book One, dated January 19,2003 [sic] at Tab 13 (Rules of Conduct signed by Plaintiff).

On July 19, 2002, Plaintiff filed a charge of discrimination with the EEOC".<sup>74</sup> On September 13, 2002, the EEOC issued a Notice of Right to Sue letter.<sup>75</sup> As set forth infra, Plaintiff filed this action on January 14, 2003.<sup>76</sup>

Defendant has a contractual obligation with DOE to follow the DOE contract.<sup>77</sup> There is a DOE Order 350.1 that is referred to in the contract between Defendant and DOE.<sup>78</sup>

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74        Facts at ¶ 42.

75        Facts at ¶ 43. The EEOC letter stated, in pertinent part: "Based upon its investigation, the EEOC is unable to conclude that the information obtained established violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed having been raised by this charge." See Exhibit 36 to Defendant's Motion for Summary Judgment. [40-1]

## **V, THE STANDARD FOR DETERMINING A MOTION FOR SUMMARY JUDGMENT**

The Defendant's Motion is governed by the holding in Celotex Corporation v. Catrett, 477 U.S. 317 (1986):

The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation there can be no "genuine issue as to any material fact,"\* since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.

*Id.* at 323; Fed. R. Civ. P. 56(c).

It is important to add that unsupported speculation by a non-moving party is insufficient to defeat a summary judgment motion. Felty v. Graves-Humphreys Co., 818 F. 2d 1126 (4th Cir. 1987). Similarly, genuine disputes of material facts are not demonstrated by the bald statements of a non-moving party in affidavits or depositions. Stone v. University of Md. Medical Sys. Corp., 855F.2d 167 (4<sup>th</sup> Cir. 1988).

In deciding whether to grant a motion for summary judgment, all justifiable inferences must be drawn in favor of the non-moving party. Miltier v. Beorg 896 F.2d 848, 852 (4<sup>th</sup> Cir. 1990); citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242,255 (1986). In addition, "once a plaintiff 'has named a witness to support [his] claim, summary judgment should not be granted without... somehow showing that the named witness' possible testimony raises no genuine issue of material fact.'" Miltier, 896 F.2d at 852, quoting Celotex v. Catrett, 477 U.S. 317, 328 (1986) (White, J., concurring).

For purposes of evaluating the appropriateness of summary judgment, this court must construe the facts are set forth in the light most favorable to Cohen. See Matsushita Elec. Indus. Co.

v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) ("[O]n summary judgment the inferences to be drawn from the underlying facts... must be viewed in the light most favorable to the party opposing the motion.") (internal quotation marks omitted); Fed.R.Civ.P. 56(c) (Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.").

When, as in the present case, the Defendants are the moving party, and the Plaintiff has the ultimate burden of proof on an issue, the Defendants must identify the parts of the record that demonstrate the Plaintiff lacks sufficient evidence. The nonmoving party, then, must then go beyond the pleadings and designate "specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). See Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

## **VI. ANALYSIS**

As Plaintiff has conceded, the issues before this Court are set forth in "a simple two count complaint for Wrongful Termination (Count I) and Retaliatory Discharge (Count II)." [58-1] Plaintiffs Complaint alleges that Defendant "created and established certain policies, practices and procedures, which defined the terms and conditions under which it expected all or its employees to conduct themselves."<sup>79</sup> Plaintiff further alleges that these policies were set out in a written document "identified as Procedure Manual 5B Human Resources Policies, Practices and Procedures and that the Procedure Manual set forth specific methods for handling such situations as Termination"<sup>80</sup> Plaintiff alleges that as an employee of the Defendant, he was entitled to rely on the Procedural Manual" and the Defendant was "obligated to follow the policies, practices and procedures set

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<sup>79</sup> See Complaint, attached to Notice of Removal [1-1] ¶ 7.

<sup>80</sup> See Complaint, attached to Notice of Removal [1-1] at ¶ 8-9.

forth in the Procedural Manual.<sup>81</sup> Plaintiff alleges that Defendant breached certain terms of the Procedure Manual when Defendant terminated Plaintiff.<sup>82</sup>

#### **A. Whether the Defendant's Procedure Manual Creates an Employment Contract**

Although Plaintiff contends that the Defendant's Procedure Manual, and specifically Policy 2.9, creates a contract of employment between him and the Defendant, he offers no evidence that would create a genuine issue of material fact that would preclude summary judgment for the Defendant. The general rule in South Carolina is that employment is "at will" and employees, or their employers, may end the relationship at any time, for any reason, or for no reason. Small v. Springs Industries 388 S.E.2d 808, 810 (S.C. 1990); Prescott v. Farmers Telephone Cooperative, Inc., 516 S.E.2d 923, 925 (S.C. 1999). Put another way, "[u]nder South Carolina law, absent specific exceptions, employment is at-will and the employee can be discharged for any reason or no reason at all." Storms v. Goodyear Tire & Rubber Co., 775 F.Supp. 862, 865 (D.S.C. 1991), citing Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985); Todd v. S.C. Farm Bureau Mut. Ins. Co. 276 S.C. 284, 278 S.E.2d 607 (1981). It is true that an employer can contractually alter this at-will relationship by issuing an employee handbook that, by its language, limits the employer's right to discharge an employee. However, the mere existence of an employee handbook does not mean that there is an employment contract. For a contract to be created, the employee must be aware of promises in the handbook, must have relied on (and continued work in reliance on) those

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<sup>81</sup> See Complaint, attached to Notice of Removal [1-1] at ¶ 10-11.

<sup>82</sup> See Complaint, attached to Notice of Removal [1-1] at ¶ 13-14;

see also Plaintiff's deposition at pp. 133-138, attached as Exhibit 1 to Defendant's Second Memorandum in Support of its Motion for Summary Judgment. [67-1]

promises, and the promises must restrict the right to discharge. Finally, there must be some evidence that the promise was breached in discharging the employee. In Small v. Springs Industries, 292 S.C. 481,357 S.E.2d 452 (1987) the South Carolina Supreme Court recognized that an employee handbook could modify the at-will employment relationship. This exception to the at-will employment rule is based on the theory of unilateral contract. Small v. Springs Industries, 292 S.C. 481, 357 S.E.2d 452 (1987). However, a unilateral contract offer requires that the promissory language in a handbook be manifestly and intentionally communicated to the employee. Only then can an employee accept the offer, and provide consideration, by relying on it and continuing to work. Small, 357 S.E.2d at 454. ("Small's action in forbearance in reliance on Spring's promise was sufficient consideration to make the promise legally binding.") (emphasis added); Taylor v. Cummins Atlantic, 852 F.Supp.1279 (D.S.C.1994), *affd*, 48F.3d 1217 (4th Cir.), *cert. denied*, 116 S. Ct. 176 (1995)) (the employee must be aware of the alleged promise and rely on it.<sup>83</sup>) Therefore, a handbook promise must not only exist, but a plaintiff must know that it exists in order to alter the at-will relationship.

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<sup>83</sup> There are many cases from other states that specifically hold an employee must have been aware of the promissory language in the handbook. See, e.g. Erdmans v. Maki, 573 N.W.2d 329 (Mich. 1997); Birmingham Parking Authority v. Wiggins, 797 So.2d 446 (Ala. 2001); Frick v. Univ. Hosp. of Cleveland, 727 N.E.2d 600 (Ohio 1999); Irvin v. Community Bank, 717 So.2d 359 (Ala. 1997); Williams v. Precision Coil, Inc., 459 S.E.2d 329 (W.Va. 1995); Duldulao v. St Mary of Nazareth Hosp. Ctr., 505 N.E.2d 314 (Ill. 1987). Indeed, there does not appear to be any case law contrary to the above cases. It is important to note that while a South Carolina court has not specifically held awareness is required, separate South Carolina courts have held the employee must continue employment in reliance of the handbook language and, in other contexts, that one cannot rely on something of which one is not aware. Towles v. United Health Care, 524 S.E.2d 839 (S.C. App. 1999) (must be reliance); Prescott v. Farmers Telephone Coop, Inc., 516 S.E.2d 923, 925 (S.C. 1999) (must be reliance); and Williams v. Texas Co., 24 S.E.2d 873,878 (S.C. 1943) (must have knowledge of the facts for there to be reliance).

Second, the handbook must restrict the right to discharge. To create a contract, handbook must also make a promise that the employee is entitled to something related to discharge. For example, in Bookman v. Shakespeare, the employer's written policy promised employees that it would investigate all complaints of harassment carefully. The employee (Bookman) became involved in a fight with a co-worker because the co-worker was sexually harassing her. 442 S.E.2d 183 (S.C. App. 1994). She claimed the employer violated its written promise to investigate all sexual harassment complaints "promptly and carefully." If they had made a careful investigation, she alleged, the fight would not have occurred. Although the court found that the employer may have breached its promise to investigate carefully, the court held that a promise to investigate "carefully" does not restrict the employer's right to discharge. The employer was free to terminate the employee because the "careful investigation" promise was not a promise that limited the employer's right to terminate at-will.

The South Carolina Court of Appeals reached the same legal conclusion in Prescott v. Farmers Telephone Co-op., Inc., 491 S.E.2d 698,702 (S.C. App. 1997) (rev'd on other grounds 516 S.E.2d 923 (S.C. 1999)). In Prescott, the handbook listed types of conduct that could result in discipline. The handbook also promised that employees could have the termination decision reviewed by higher levels of management. Critically, the court held, Prescott did not direct the court to any language in the handbook promising pre-termination warnings or other procedures. Therefore, the court noted, the case was unlike previous South Carolina handbook cases that dealt with promises of pre-termination procedures. A promise concerning review after the decision was made, the court held, did not limit the right to discharge. The court also held that the listing of conduct that could result in discipline, without promising a certain procedure before discipline, did not limit the right to discharge. See also Epps v. Clarendon County, 405 S.E.2d 386 (S.C. 1991) (a handbook that did not address pre-termination

procedures did not create a contract).

In every handbook case in which the South Carolina Supreme Court has found a jury question, language in the handbook restricted the pre-discharge procedure. For example, in Smalls v. Springs Industries, the handbook stated there would be four warnings before discharge, but only one warning was given. 357 S.E.2d 452 (S.C. 1987). Likewise, in Jones v. General Electric, the disciplinary policy stated that offenses "with repetition will lead to disciplinary time off and/or discharge." 503 S.E.2d 173,183 (S.C. App. 1998). In Conner v. City of Forrest Acres, the handbook stated "employees shall be treated fairly and consistently," and "discipline shall be of an increasingly progressive nature." 560 S.E.2d 606, 611 (S.C. 2002). The South Carolina Supreme Court has never held that the mere recitation of types of discipline, or that promissory language in a handbook that does not relate to the discharge procedure, is enough to create a jury question on an alleged promise to follow certain procedures before discharge. Accordingly, the Defendant should be granted summary judgment on this claim.

## **B. Whether the Defendant Breached a Contract with the Plaintiff**

Plaintiff admitted in his deposition that his breach of contract claim was based solely on Defendant's Policy 2.9, and specifically testified that there were no other policies he was relying upon.<sup>84</sup> Policy 2.9 sets forth the termination practices to be followed by the Defendant's human resources division. Reading Plaintiff's Complaint liberally, as this Court is compelled to do, it appears that Plaintiff alleges that Defendant's Policy 2.9 is an employment contract or employment policy, and Plaintiff has identified three incidences which he argues are Defendant's

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<sup>84</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at pp. 132-139.

breaches of Policy 2.9:<sup>85</sup> (1) Plaintiff was denied due process under Defendant's Policy 2.9; (2) Plaintiff was denied an exit interview; and (3) Plaintiffs discharge had not been approved by Defendant's president.<sup>86</sup> Each of these allegations will be addressed *seriatim*.

### **1. Defendant's Policy 2.9**

This Court has reviewed Defendant's Policy 2.9, which purpose is stated as follows: "This practice establishes requirements and responsibilities for voluntary or involuntary termination of employment from [the Defendant]."<sup>87</sup> Thus, Policy 2.9 defines the parameters of "termination processing"<sup>88</sup> Just as the policy discussed in Prescott, Defendant's Policy 2.9 sets forth the Defendant's procedures involved in the termination process.<sup>89</sup> The policy addresses the administrative process of termination and the responsibilities of Defendant's various departments in the termination process. Significantly, however, Policy 2.9 does not contain any substantive promise to the Plaintiff that could be construed as limiting Defendant's right to discharge.

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<sup>85</sup> Plaintiff testified that he did not know of any other policies that had been violated. See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at p. 139).

<sup>86</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at pp. 132-139. Plaintiff also testified that he believed he should have been given advance notice of his termination under Policy 2.9, (Plaintiff's Dep. at p. 134, lines 8-17) but he appears to have abandoned this issue as he has not briefed it to the Court. In any event, to the extent that Policy 2.9 addresses advance notice, it does so only with respect to a direction to managers that they give advance notice to other of Defendant's departments in order to ensure administrative coordination of the termination.

<sup>87</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 38, titled Termination Practices, contained in Human Resources Policies, Practices and Procedures, Manual 5B, Procedure 2.9.

<sup>88</sup> See Defendant's Motion for Summary Judgment [40-1] Tab 38 at p. 6.

<sup>89</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 38, titled Termination Practices,<sup>1</sup> contained in Human Resources Policies, Practices and Procedures, Manual 5B, Procedure 2.9.

Nevertheless, construing Plaintiffs Complaint broadly, as this Court must do, it appears that Plaintiff asserts that Policy 2.9 affords him some type of due process. However, the express terms of the Policy do not contain any mention of due process (either by that express term or by description) or, in fact, any discussion of pre-discharge process as it relates to the employee. Thus, this policy is the same as the policy in Prescott. A review of Policy 2.9 indicates that it addresses the Defendant's process of dealing with a terminated employee. Policy 2.9 does not promise the Defendant a pre-termination procedure and therefore no part of Policy 2.9 was breached when Plaintiff was terminated.

## **2. The Exit Interview**

Plaintiff also claims that he was not afforded the exit interview as promised in Policy 2.9 and he argues that this constitutes a breach of his employment contract. Again, Policy 2.9 sets forth the "Termination Practices" which govern the administrative process of termination. As is clear from the text of Policy 2.9, "Human Resources is responsible for collecting all completed forms and conducting an exit interview with the employee on his/her last day of work (if requested by the employee)." As a threshold matter, Policy 2.9 makes clear that any "exit interview" is a post-termination procedure. Second, and perhaps most importantly, Plaintiff admitted in his deposition that he did not request an exit interview.<sup>90</sup> Therefore, the fact that Plaintiff did not ask for, and receive an exit interview cannot be viewed as a breach of Policy 2.9 by the Defendant.

## **3. Proper Approval of Plaintiffs Termination**

Plaintiff also alleges that the termination procedure was not followed because the Defendant's president should have approved his termination. As with the issues discussed infra, this issue is without merit.

Defendant's Policy 2.9 unequivocally states "The [Defendant's]

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<sup>90</sup> Defendant's Motion for Summary Judgment [4] at Tab 1. Plaintiff's Dep. at p. 137, lines 18-25.

president or designee is responsible for approving any "Discharge" or "Discontinue terminations."<sup>91</sup> Thus, Policy 2.9 plainly states that the president can designate another person to approve discharges. This is exactly what was done in the present case. Executive Vice-President David Amerine was Defendant's President's designee.<sup>92</sup> Mr. Amerine reviewed the Human Resources Review Committee's recommendation and approved Plaintiffs discharge on August 30,2001.<sup>93</sup> Plaintiff was terminated, effective August 31, 2001 for failure to follow the terms of probation, and for. insubordination.<sup>94</sup> Plaintiff's claim that his termination was not properly approved is without merit.

### **C. Other Policies**

After the Defendant filed its Motion for summary judgment in January 2004, Plaintiff asserted that his termination was in violation of other of Defendant's policies, but he has failed to explain to this Court the manner in which these policies might restrict Defendant's right to discharge him. In addition, Plaintiff stated in his deposition that his breach of contract claim was based only on Policy 2.9 and he specifically testified that there were no other policies on which he was relying on.<sup>95</sup> Plaintiff cannot create a material issue of fact in opposition to summary judgment by submitting factual assertions that contradict his prior sworn deposition testimony.

<sup>91</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 38 (Policy 2.9).

<sup>92</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 39 (Affidavit of Lorrie A. Lott, Principal Human Resources Representative for the Human Resources Policies Administration Department for the Defendant, at ¶4.

<sup>93</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 39 (Affidavit of Lorrie A. Lott, Principal Human Resources Representative for the Human Resources Policies Administration Department for the Defendant, at ¶ 4.

<sup>94</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 39 (Affidavit of Lorrie A. Lott, Principal Human Resources Representative for the Human Resources Policies Administration Department for the Defendant, at ¶ 5.

<sup>95</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff

See, e.g., Hernandez v. Trawler Miss Vertie Mae, Inc., 187 F.3d 432,438 (4th Cir. 1999); Rohrboueh v. Wveth Laboratories, 916 F.2d 970,975 (4th Cir. 1990); Barwick v. Celotex Corp., 736 F.2d 946,960 (4th Cir. 1984). As the Fourth Circuit stated in Barwick, the efficacy of summary judgment would be greatly diminished "[i]f a party who has been examined at length in deposition could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony." 736 F.2d at 960."[A] genuine issue of material fact is not created where the only issue of fact is to determine which of the two conflicting versions of the plaintiff's testimony is correct." Id.

More significantly, however, even if Plaintiff had asserted (prior to Defendant filing its Motion for Summary Judgment) that other policies prohibited his termination as it occurred, it remains that none of the other policies mentioned by Plaintiff serve to alter his status as an at-will employee of the Defendant. First, Plaintiffs reliance on Defendant's "Rules of Conduct" is wholly misplaced, as these rules of conduct list only the types of conduct that can result in discipline.<sup>96</sup> The rules do not promise any pre-termination procedure. Therefore, the Defendant's rules of conduct are exactly like the rules of conduct in Prescott and do not limit the Defendant's right to discharge an employee.

Second, while Plaintiff did not testify that it formed a part of his contract claim, Plaintiff stated in his deposition that he could not be required to report to certain managers about his absences because the attendance policy only mentions management in general.<sup>97</sup> As discussed above, however, the Defendant's instruction to Plaintiff that he must report to a specific person does not restrict the Defendant's right to discharge that employee.

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<sup>96</sup> See Plaintiff's Book One, dated January 19,2003 [sic] at Tab 13 (Rules of Conduct signed by Plaintiff).

<sup>97</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1, Plaintiff's Dep. at pp. 12-13,20, 100, 111,129.

Simply stated, that instruction does not change the nature of the at-will relationship because the Defendant did not promise Plaintiff that he would not be discharged if he reported to any manager. Moreover, the absence of a written statement authorizing the Defendant to instruct an employee as to a certain procedure does not contractually preclude Defendant from doing so. To conclude the opposite would result in a policy whereby an employee could refuse any instruction not specifically authorized in writing. This Court will not accept Plaintiff's argument, for it would lead to an absurd result.<sup>98</sup>

Finally, Plaintiff argues that he could not be required to return to work if he had a medical problem. This argument is equally unavailing, because the Defendant had no policy that promised him this. In addition, this Court notes that Plaintiffs medical excuses had restrictions, but not work exclusions. Therefore, Plaintiff's argument is wholly without merit.

#### **D. Plaintiffs Claim of Retaliatory Discharge**

Plaintiffs second cause of action alleges retaliatory discharge by the Defendant. Plaintiff describes himself as a "well-educated, outspoken African American" who "often spoke-out [sic] on issues" and "advised other employees [of the Defendant] of their rights and obligations under the Procedural Manual."<sup>99</sup> Furthermore, Plaintiff owned and operated his own business "at the time he worked for [the Defendant]" and "[t]he fact that [Plaintiff] was out-spoken [sic] as herein described caused certain managers at [Defendant] to

<sup>98</sup> As Defendant correctly argues in its Second Memorandum in Support of its Motion for Summary Judgment, Plaintiff's argument, if accepted, would cause the employer to set forth a seemingly limitless set of written rules that would attempt to address every possible interaction between employers and management. As the Defendant notes, it need not have a written policy that prohibits an employee from punching his or her supervisor in the nose. To expect that an employer could articulate a written policy that could anticipate every possible occurrence defies common sense. For Plaintiff to argue that the Defendant should have had such a policy stretches credulity to a breaking point.

<sup>99</sup> See Complaint, attached to Notice of Removal, at ¶ 17-19.

want to terminate him."<sup>100</sup> Plaintiff further alleges that "[t]he fact that [Plaintiff] owned and operated a business caused certain managers at [Defendant] to be jealous and want to terminate him."<sup>101</sup> Therefore, Plaintiff reasons, Defendant "retaliated against [Plaintiff] by terminating him as an employee."<sup>102</sup> Plaintiff alleges that the retaliatory termination was a result of his exercise of "[t]he right to speak out" and "[t]he right to own your own business."<sup>103</sup> The evidence, however, points to a different reason for termination; Plaintiff's insubordination and his failure to follow the directives of management. Defendant has presented this Court with a wealth of evidence documenting issues Defendant called to Plaintiff's attention regarding various infractions of Defendant's rules.<sup>104</sup> Plaintiff's tardiness, unannounced absences from work, and general poor attendance at work.<sup>105</sup> Even if Plaintiff's claim of retaliation were entitled to review by this Court, Plaintiff could not sustain his burden of proving a prima facie retaliation claim. In order to state such a claim, Plaintiff must show that (1) he engaged in protected activity; (2) Defendant took an adverse employment action against him; and (3) a causal connection existed between the protected activity and the adverse action. Laughlin v. Metropolitan Washington Airports Authority, 149 F.3d 253 (4th Cir. 1998);

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<sup>100</sup> See Complaint, attached to Notice of removal, [1-1] at flf 20,23.

<sup>101</sup> See Complaint, attached to Notice of Removal, [1-1] at U 24.

<sup>102</sup> See Complaint, attached to Notice of Removal, [1-1] at fl 25.

<sup>103</sup> See Complaint, attached to Notice of Removal, [1-1] at ¶ 26-27.

<sup>104</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 3 (out of work area without proper authorization), Tab 32 (sleeping on shift) and Tab 33 (placed on probation for es of Conduct, Requests for Time off, Insubordination, unsatisfactory job performance and failure to keep Defendant advised regarding his medical condition).

<sup>105</sup> See Defendant's Motion for Summary Judgment [40-1] at Tabs 4, 5,6, 7, 9,10,11,17,20,21, 22, 23,25,26,33, and 34.

Dowe v. Total Action Against Poverty In Roanoke Valley, 145 F.3d 653 (4th Cir. 1998); Mundav v. Waste Management Of North America, Inc., 126 F.3d 239 (4th Cir. 1997).

Under the controlling statutory language, protected activities fall into either the opposition clause or the participation clause. See Kubicko v. Ogden Logistics Services, 181 F.3d 544, 551 (4th Cir. 1999) citing 42 U.S.C. § 2000e-3(a) (making it unlawful for an employer to discriminate against an employee because he has opposed an unlawful employment practice or because he has made a charge, ..., or participated in an investigation under the statute); see also, Laughlin, 149 F.3d at 257. The Fourth Circuit Court of Appeals has said that "[opposition activity encompasses utilizing informal grievance procedures as well as staging informal protests and voicing one's opinions in order to bring attention to an employer's discriminatory activities." Kubicko, 181 F.3d at 551. In the present case, Plaintiff cannot satisfy the first prong of his retaliation claim because he cannot show that he engaged in any statutorily protected oppositional or participatory activity. Therefore, Defendant is entitled to summary judgment on Plaintiffs claim of retaliatory discharge.

#### **E. Plaintiff Has Admitted That He Failed to Mitigate His Damages**

Even if Plaintiff were successful in showing that a genuine issue of material fact existed that would preclude summary judgment for the Defendant, it remains that any potential award to Plaintiff would be affected by the fact, as admitted by Plaintiff, that he failed to mitigate his damages.<sup>106</sup>

---

<sup>106</sup> As it was stated by the Plaintiff [68-1] that he does not base the instant action on racial discrimination, this Court will not engage in a discussion of mitigation of damages as required by Title VII, as amended, 42 U.S.C. §2000e-5(g).

Under South Carolina law, "[t]he doctrine of avoidable consequences operates in wrongful discharge actions, as in others, to permit a wrongfully discharged employee to recover only damages for losses which, in the exercise of due diligence, he could not avoid. The employee's so-called duty to mitigate his damages permits the employee to recover the amount of his losses caused by the employer's breach reduced by the amount the employee obtains, or through reasonable diligence could have obtained, from other suitable employment." Hinton v. Designer Ensembles, Inc., 335 S.C. 305, 516 S.E.2d 665, 672 (Ct. App. 1999), quoting Chastain v. Owens Carolina, Inc., 310 S.C. 417, 419-20, 426 S.E.2d 834, 835 (Ct. App. 1993), *in turn* quoting Small v. Springs Industries, Inc., 300 S.C. 481, 388 S.E.2d 808 (1990). "[T]he party who claims damages should have been minimized has the burden of proving they could have been avoided or reduced." Chastain, 310 S.C. at 420, 426 S.E.2d at 835. "Whether an employee has fully mitigated his damages is a question of fact to be determined from the circumstances of each case." *Id.* at 420, 426 S.E.2d at 836.

Under the circumstances of the present case, it is apparent that Plaintiff failed to mitigate his damages. Plaintiff admitted in his deposition that he did not want to increase his income because that would cause him to pay additional child support.<sup>107</sup> He also testified that he disposed of his interest in his clothing store because the judge in his divorce case thought he was hiding business records to shield his income.<sup>108</sup> Plaintiff further admitted he was not seeking jobs that would cause him to earn more than "a minimal amount of money."<sup>109</sup> Plaintiff therefore has deliberately avoided his duty to mitigate his damages.

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<sup>107</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1 (Lawrence Dep. p. 159)

<sup>108</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1 (Lawrence Dep. pp. 157-158).

<sup>109</sup> See Defendant's Motion for Summary Judgment [40-1] at Tab 1 (Lawrence Dep. p. 159).

## **VII. CONCLUSION**

For the aforementioned reasons, it is recommended that Defendant's Motion for Summary Judgment [40-1] be granted.

George C. Kosko

s/ George C. Kosko

George C. Kosko

United States Magistrate Judge

July 19, 2004

Charleston, South Carolina



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

FILED  
September 12, 2005

No. 05-1506  
CA-03-484-RBH

CHRISTOPHER LAWRENCE

Plaintiff - Appellant

v.

WESTINGHOUSE SAVANNAH RIVER COMPANY LLC

Defendant - Appellee

-----  
ORDER  
-----

The appellant has filed an untimely petition for rehearing. This Court strictly enforces the time limits for filing Petitions for rehearing and rehearing en banc. The Court denies the petition for rehearing as untimely filed.

For the Court - By Direction

"s/ Patricia S. Connor"  
CLERK

APPENDIX E

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

Lewis F. Powell Jr. United States Courthouse Annex  
1100 E. Main Street, Suite 501  
Richmond Virginia 23219-3517  
[www.ca4.uscourts.gov](http://www.ca4.uscourts.gov)

Patricia S. Connor  
Clerk

Telephone  
(804) 916-2700

September 12, 2005

Christopher Lawrence  
2740 Highpoint Rd.  
Snellville, GA, 30078

Charles Franklin Thompson Jr., Esq.  
MALONE, THOMPSON & SUMMERS LLC  
1312 Gadsen Street  
Columbia, SC 29201

Re: 05-1506 Lawrence v. Westinghouse Savan  
CA-03-484-RBH

Dear Counsel and Mr. Lawrence:

Enclosed is a copy of an order filed today in this case. Also Enclosed to Mr. Lawrence are the two audio cassette tapes submitted with the untimely petition for rehearing.

Yours truly,

PATRICIA S. CONNOR  
Clerk  
/s/ Michael Radday  
By: \_\_\_\_\_  
Deputy Clerk

Enclosure (s)

Cc: Clerk, U.S. District Court  
APPENDIX E

In the District Court of the United States  
For The District of South Carolina

**FILED**

**AIKEN DIVISION**

JUN 14 2004

Larry W. Propes, Clerk  
Charleston, SC

Christopher Lawrence	)	
	)	
Plaintiff	)	Civil Action No. 1:03-484-BG
	)	
	)	
	)	<b>BRIEFING ORDER</b>
Westinghouse Savannah	)	
River Company LLC	)	
	)	
Defendant	)	
	)	

This is an Order directing the parties on the Court's requirement for briefing on the summary judgment motion filed in this case.

I. Immediately upon completion of the hearing on this date, counsel for the Defendant, and the Plaintiff, shall confer, and shall agree upon a Statement of Undisputed Facts. This Statement shall not be argumentative but shall state those facts upon which there is no dispute. This consultation shall be conducted in good faith, and upon completion thereof, the parties shall recite in open Court the facts upon which they agree. These facts shall be reduced to writing by the Defendant, and shall be filed with the Court and titled Statement of Undisputed Facts.

Only the facts necessary for this Court to determine the motion for summary judgment shall be in this Statement of Undisputed Facts.

**APPENDIX F**

II. If the parties verily the Court should be made aware of a fact which are contested, that is, not agreed to by both parties, such party shall file with the Court no later than 12:01 p.m. Friday, June 18, 2004, a Statement of Disputed Facts. This Statement shall follow this form:

1. Each fact shall be separately stated, and numbered.
2. Each fact shall provide a clear reference or citation to the location(s) of the fact in the documents filed, the page upon which the fact can be found, and the paragraph number where it can be located.

This Statement of Disputed Facts shall be served upon the opposing the party by such means as to insure it is received on or before the filing deadline. Service is to be accomplished by either express mail delivery, facsimile, and/ or e-mail. An affidavit shall be filed thereafter with the Court setting forth the method of delivery to the opposing party.

The opposing party shall have until 12:01 p.m. on Wednesday, June 23, 2004, to file a response to the Statement of Disputed Facts. This document shall follow the same directives as to form and substance as stated hereinabove.

III. The Defendant shall re-submit a brief arguing the reasons it is entitled to summary judgment. This brief shall be filed on or before 12:01 p.m., Friday, June 25, 2004. Service upon the Plaintiff shall be as provided hereinabove and an affidavit shall be filed setting for the method of delivery as hereinabove provided.

IV. The Plaintiff shall file a brief in response to the Defendant's brief for summary judgment on or before 12:01 p.m. on Friday, July 2, 2004. Service upon Defendant's counsel shall be as provided hereinabove and affidavit shall be filed setting forth the method of delivery as hereinabove provided.

V. Should the Defendant elect to file a reply brief, it shall file it on or before 12:01 p.m. on Wednesday, July 7, 2004. Service upon the Plaintiff shall be as provided hereinabove and an affidavit shall be filed setting for the method of delivery as hereinabove provided.

VI. The Local Civil Rules of this Court shall be strictly adhered to, including, but not limited to the length of the briefs. The parties also are directed to include a copy of the page of any document referred to in the brief, responsive brief, and reply brief. This copy shall be from a document already filed and shall have affixed to the bottom of the document the name of the document, the date it was filed, and the page number. The Court does not intend the parties to re-file the documents already on file, but only to attach the one page from such filed document that supports arguments made in the brief.

This Briefing Order has set forth short time periods for compliance. The parties have already filed numerous documents and briefs, and this re-filing will impose minimal additional work.

"S/ George C. Kosko  
George C. Kosko

June 14, 2004  
Charleston, South Carolina

## APPENDIX F

Law Offices  
**MALONE & THOMPSON**  
1527 Blanding Street (29201)  
Columbia, South Carolina 29211-1288  
Telephone 803 254-3300  
Facsmile 803 254 0309  
E-Mail [firm@mandtlawfirm.com](mailto:firm@mandtlawfirm.com)

Michael D Malone  
Charles F. Thompson Jr. \*

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Labor & Employment  
Employee Law

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Special Counsel  
Lawrence J. Needle

*Immigration*

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Of Counsel  
Robert E. Allen Δ

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H. Frank Malone  
1930-2002

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June 15, 2004

VIA FACSIMILE 843-579-2635

The Honorable George C. Kosko  
United States Magistrate Judge  
P. O. Box 833  
Charleston, S.C. 29402

**RE: *Lawrence v. Westinghouse Savannah River Company* 03-484-26BG**  
Dear Judge Kosko:

**APPENDIX G**

I completed my statements of uncontested and contested facts today and have overnighed copies to Mr. Lawrence. I also left him a voicemail offering to fax or email them. The clerk was very helpful in rushing a copy of the hearing tape to me.

After reflecting on the hearing, I would like to address the jurisdictional issue mentioned by the court. I would not attempt to invoke federal jurisdiction if it were not warranted. I have repeatedly tried to get Mr. Lawrence to agree that he is not asserting a claim for race discrimination. If he had agreed to this earlier in the case, I would have agreed to a remand. However, he steadfastly insists on having his cake and eating it too. He will state that his claim is based on breach of contract but he will also insist that his absences and other conduct (that caused his discharge) were treated differently because of race. I do not know what to else to call this but a race discrimination claim. So long as he clings to this assertion, I believe my client has a justified right to invoke federal jurisdiction. Of course, after all that has transpired in the case, I hope that the court uses its supplemental jurisdiction to address the state law claims even if the door is closed on any discrimination claim.

Yours very truly,

"S/ Charles F. Thompson, Jr."  
Charles F. Thompson, Jr.

CFT/mmi  
cc: Mr. Christopher Lawrence  
Mtesa Cottemond, Esquire

#### APPENDIX - G



1   **IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF SOUTH  
CAROLINA**

2  
3   **CHRISTOPHER LAWRENCE**  
4            **vs**  
5   **WESTINGHOUSE SAVANNAH  
RIVER COMPANY LLC**  
6   **03 - CV - 484**

7  
8   Motion Hearing in the above matter held on  
9   Monday, January 5, 2004, commencing at 10:09  
10   a.m., before the Hon. George C. Kosko, in the  
11   United States Courthouse, 85 Broad Street,  
12   Charleston, South Carolina, 29401.

13  
14  
15   **APPEARANCES:**

16   Christopher Lawrence, 2740 Highpoint Rd.  
      Snellville, GA appeared pro se.  
17   Charles F. Thompson, JR., ESQ., 1527  
      Blanding Building, Columbia, SC appeared  
18   for defendant.

19  
20  
21   **RECORDED BY** Gilbert O'Brien, ESR OPERATOR  
22   **TRANSCRIBED BY** DEBRA L. POTOCKI, RDR,  
      CRR 85 Broad Street, Charleston, SC, 29401  
23   843-723-2208

24 Proceedings recorded by electronic sound recording;  
25 transcript produced by computer-aided transcription

1 THE Court: First case is Lawrence versus  
2 Westinghouse, 3-484  
3 Mr. Lawrence?  
4 MR. Lawrence: Yes, sir.  
5 THE Court: Yes, sir what?  
6 MR. Lawrence: I'm present. Yes, sir.  
7 Plaintiff presented -- provided to the Court motion  
8 to compel the defendant to provide timely requests  
9 and entirely requests to produce documents that is  
10 needed to prepare the pretrial brief and prior  
11 before then, to conduct the proper depositions of  
12 the witnesses.  
13 Well, the plaintiff requested numerous times  
14 through phone calls to --  
15 THE Court: Say that again to me real slow now.  
16 MR. Lawrence: Yes, sir.  
17 THE Court: The plaintiff has requested numerous  
18 times through --  
19 MR. Lawrence: Through certified --  
20 THE Court: -- phone calls. Is that what I  
21 heard?  
22 MR. Lawrence: Phone calls.  
23 THE Court: Okay.  
24 MR. Lawrence: Fax, and then service of a letter  
25 to produce. And up to this point, the defendant did

1 provide some of the documents that is needed, but  
2 not entirely. So upon the last request, the  
3 defendant responded with the letter of objections  
4 and refused to do the search of documents, which led  
5 me to file this motion before the Court.

6 THE Court: All right, Mr Lawrence, you've been  
7 here before.

8 MR. Lawrence: Yes, sir.

9 THE Court: In a pro se status.

10 MR. Lawrence: Yes sir.

11 THE Court: And we've explained to you in the  
12 past that we will grant you great latitude, but we  
13 will not suspend the Rules of Civil Procedure, we  
14 will not suspend the local rules just because you  
15 choose not to get an attorney.

16 MR. Lawrence: Yes, sir.

17 THE Court: Do you understand that?

18 MR. Lawrence: Yes, sir.

19 THE Court: Now, where's your certificate of  
20 service of this motion?

21 MR. Lawrence: Right here.

22 THE Court: That was attached to the pleading?

23 MR. Lawrence: Yes, sir.

24 THE Court: Let me see it. Mr. Thompson?

25 MR. Thompson: Yes, Your Honor.

1 THE Court: Did you get this motion?

2 MR. Thompson: I have a motion to compel Fed

3 Rule of Civil Procedure 37 and memorandum of

support

4 thereof.

5 THE Court: So, you did get it?

6 MR. Thompson: Yes, Your Honor, I did.

7 THE Court: Okay. Well, the certificate of

8 service is not attached to the original.

9 All right, Mr. Thompson, what do you say about

10 Mr. Lawrence's pro se motions?

11 MR. Thompson: Well, Your Honor, he's not really

12 being specific about what he wants, but we have

13 timely and fully responded to any relevant timely

14 requests that he has made. In fact, my client has

15 really bent over backwards.

16 There are some objections to his last-minute

17 request to produce he served just a few days

18 before the expiration of discovery deadline. And

19 not only were the requests untimely, but irrelevant

20 as well. And I'm not sure specifically what --

21 THE Court: Have you filed a motion for

22 protective order?

23 MR. Thompson: No, Your Honor.

24 THE Court: Okay, so you've waived that

25 argument

1 MR. Thompson: There was nothing privileged that  
2 he's seeking or anything that would require--  
3 THE Court: If you asked -- if you suggest that  
4 his interrogatory and discovery is not relevant,  
5 then rather than not respond to it, you need to file  
6 a motion for protective order. Otherwise, I will  
7 contend that I will have no reason to believe that  
8 this is standard boiler plate, irrelevant, will not  
9 lead to discoverable evidence, da, da, da, da, ad  
10 nauseam. But if you're really serious about it,  
11 you'll file a motion for protective order.

12 Now, let's take Exhibit A, dated November the  
13 13, 2003. Mr. Lawrence, where's your certificate of  
14 service on this motion?

15 MR. Lawrence: It was served to--

16 THE Court: Where is your certificate?

17 MR. Lawrence: Your Honor, I don't have it with  
18 me, but it was served--

19 THE Court: It's not filed with your documents,  
20 it's not attached to your motion to compel as  
21 required by the local rules. Local rules also  
22 require you to file a certificate of -- have a  
23 certificate of service for every pleading that's  
24 filed, be it pro se or be it an attorney. I don't  
25 see one here.

1 Motion denied, failure to follow the local  
2 rules.  
3 Go to Exhibit B, dated November the 4<sup>th</sup>, 2003.  
4 Where's your certificate of service on that?  
5 MR. Lawrence: Exhibit B. This too was not  
6 attached as an exhibit with the certificate of  
7 service, but every time the plaintiff served the  
8 document to the defendant to respond, there was a  
9 certificate of service attached to his.  
10 THE Court: Not with the copy to the Court  
11 Denied, failure to follow local rules  
12 Go to Exhibit B - -C, dated October 22, 2003  
13 Plaintiff's third request to produce specific  
14 documentation from defendant. It does have a  
15 certificate of service on it.  
16 MR. Lawrence: Yes, sir.  
17 THE Court: All right. Explain to me why I  
18 should waive the local rule for failure to follow it  
19 and not make your motion to compel in a timely  
20 fashion.  
21 MR. Lawrence: On this particular one, Your  
22 Honor--  
23 THE Court: We're talking about Exhibit C to  
24 your motion, and the document is captioned  
25 plaintiff's third request to produce specific

1 documentation from the defendant, and it is dated  
2 October the 23<sup>rd</sup>.  
3 MR. Lawrence: Yes, sir.  
4 THE Court: Okay?  
5 MR. Lawrence: The defendant provided, and their  
6 response to me was that there was nothing logged in  
7 Mr. Thigpen's file relevant to what I asked him to  
8 produce. And then after talking with - -we appeared  
9 here for the first motion to compel, and I  
10 specifically talked with Mr. Malone, Attorney  
11 Malone, and I gave him information. Well, they in  
12 turn provided a letter to me saying that they have  
13 searched and searched, and there is nothing there.  
14 Later on, sometime in - - in their later  
15 providing documents to me, then it surfaced, after  
16 countless times they were saying we searched nothing  
17 there in Mr. Thigpen's file, nothing.  
18 THE Court: Mr. Thompson, what do you say about  
19 that?  
20 MR. Thompson: Well, first, Your Honor, this  
21 dates back to - - when he made this request, it was  
22 faxes letter to me, not in an interrogatory or  
23 request to produce. Nevertheless, Westinghouse  
24 sought to provide him information. He asked for a  
25 human resources file, which we gave him. We weren't

1 playing games with him. Westinghouse has documents,  
2 as you can imagine, all over the place. He  
3 requested human resources file, that's what I asked  
4 my client to provide, that's what they provided.  
5 We did not have some documentation that some  
6 supervisors or managers out there had. Once I  
7 talked to Mr. Lawrence, and this is over probably a  
8 couple months, and got specifically what complaints  
9 he alleges were logged against his old supervisor  
10 Mr. Thigpen, then we could go back and talk to  
11 supervisors and say, okay, do you remember this  
12 specific incident. And we were able to come up with  
13 some documents they had in their files, which we  
14 produced to Mr. Lawrence.

15 THE Court: Were those files in the personnel  
16 file?

17 MR. Thompson: No, they were not in the human  
18 resources file.

19 THE Court: That was what the interrogatory was  
20 addressed to, personnel files, as I recall.

21 MR. Thompson: That's right, and he did expand  
22 that someone in his third request to produce, but  
23 at this point we have given him everything we know  
24 exists.

25 THE Court: All right, Mr. Lawrence, your

1 Exhibit C is denied for failure to follow the Local  
2 Rule 7.06, which says you shall file motions to  
3 compel within fifteen days of the offending  
4 discovery.

5 Exhibit D, dated June the 22<sup>nd</sup>, 2003. God,  
6 please tell me what this is about. It would appear  
7 to me that you're using Rule 26 discovery plan for  
8 an interrogatory; they're not the same thing. Is  
9 that in essence what Exhibit D is?

10 MR. Lawrence: When I first - - during our first  
11 meeting with the defendant, he said that since I was  
12 pro se, any requests that I would submit to him, he  
13 would honor. And that's the reason why he responded  
14 to the facts that I sent to him as Exhibit F. He  
15 said --

16 THE Court: I'm on D, I'm not on F yet. We'll  
17 get to F. Let's do D. D is the 26 (f) discovery  
18 plan.

19 MR. Lawrence: Yes, sir. This was after me  
20 having conversation with him, and talking with him,  
21 and being in the meeting. He said that he will  
22 honor documents that I would send to him in a  
23 request, whether it was faxed, phone conversation.  
24 And this was what - -

25 THE Court: And did he do it?

1 MR. Lawrence: No, he didn't.

2 THE Court: What did he not do?

3 MR. Lawrence: He didn't provide the information  
4 from Mr. Thigpen's file, nor did the other  
5 subsequent information that I stated that was  
6 necessary for the witnesses, in their personnel  
7 files. Those were served to me on the 28<sup>th</sup>, after  
8 the discovery --

9 THE Court: 28<sup>th</sup> of what?

10 MR. Lawrence: November. After the discovery  
11 deadline was over. And this information was  
12 requested back in June and May, and then again in  
13 July. So now that by that time, he could have,  
14 and the company could have responded timely enough  
15 fashion for me to have that information, not  
16 received it on the 28<sup>th</sup> day of November. This is  
17 after the discovery.

18 THE Court: Mr. Thompson, what do you have to say to  
19 that?

20 MR. Thompson: Your, Honor, I did tell him,  
21 submit me a request. I didn't -- I've been fairly  
22 consistent with him, no verbal, he's got to give me  
23 something in writing. You know --

24 THE Court: We're going to get to the verbal in  
25 a minute.

1 MR. Thompson: -- Rule 26 discovery plan, as  
2 I've explained to him, is not a request. He did  
3 request some of these personnel files, which I  
4 given him, but there are some names on here that he  
5 never sent me a written request for, other than this  
6 26 (f) plan.

7 THE Court: Okay. Motion on D denied for  
8 failure to follow Local Rule 7.0v  
9 E, Exhibit E's dated June 10<sup>th</sup>.

10 MR. Lawrence: Yes, sir. Here again the  
11 plaintiff is asking for information from MR.  
12 Thigpen's file, even into the discovery disclosures.  
13 And as he just mentioned, any document -- he said I  
14 had submitted to him in a document, and this is what  
15 he just told the Court. Well, even up to this  
16 point, this is a document that I submitted to him,  
17 still wasn't honored entirely

18 THE Court: Have you got it now?

19 MR. Lawrence: Yes, sir.

20 THE Court: Okay. E is moot. F, Exhibit F is a  
21 facsimile cover page with almost indecipherable  
22 hieroglyphics thereupon.

23 MR. Lawrence: Yes, sir.

24 THE Court: Would you tell be what it says?

25 MR. Lawrence: It says the following information

1 was excluded from the package of information you  
2 received on 5-14-03. Moreover, I made recent phone  
3 calls to your office requesting a part of -- as a  
4 part of the interrogatories, information from  
5 Westinghouse human resource's file. One, nuclear  
6 material management's division nonexempt employees'  
7 time during the year 2000.  
8 Well, he sent me a disk with downloaded some of  
9 the employees' information.

10 THE Court: You want all the employees at the  
11 nuclear plant's hours for the year 2000?

12 MR. Lawrence: Sir --

13 THE Court: Is that the translation?

14 MR. Lawrence: For that division.

15 THE Court: How many people are in that  
16 division?

17 MR. Lawrence: Probably about two hundred. But  
18 it's --

19 MR. Thompson: We actually gave it to him, Your  
20 Honor.

21 THE Court: Did you get it?

22 MR. Lawrence: Yes, sir.

23 THE Court: On a CD?

24 MR. Thompson: Yes, sir.

25 THE Court: Okay.

1 MR. Thompson: But it's done in a composite, so  
2 it's not -- it's not a long drawn out list, big  
3 stack of lists. Then moreover then I said during  
4 the year 2000, such data include medical leave,  
5 vacation, time banked hours, sick days and years of  
6 service.

7 THE Court: Mr. Lawrence, is that on the CD?

8 MR. Lawrence: Not --no, sir, not all of it.

9 It's just their time showing that they worked and  
10 wasn't there.

11 THE Court: Where is this information for this  
12 plethora of individuals?

13 MR. Thompson: What I gave him, Your Honor,  
14 there should be a notation beside each computer  
15 entry. I think what he wants is all the backup  
16 documentation, which is not what he asked for. And  
17 this is not even a request to produce to begin with;  
18 nevertheless, I gave him the information. This has  
19 already been the subject of his first motion to  
20 compel, which was denied.

21 MR. Lawrence: Your Honor, see, what I'm saying  
22 is in our first meeting he did agree to my requests,  
23 if they were submitted in writing. So I -- I'm not  
24 so far in the clouds where I don't understand this  
25 is a lot of information. But he still honored part

1 of it, which let me know he could have honored  
2 the entire request. And not on the day of the 28<sup>th</sup>,  
3 after the discovery's closed

4 THE Court: All right. Motion denied on the Ma  
5 19<sup>th</sup> - - or 2003 motion, pursuant to Rule 7.06,  
6 untimely.

7 Now, that disposes of all the matters in your  
8 motion to compel. The time for discovery has  
9 expired there a dispositive motion to be filed  
10 in this case?

11 MR. Thompson: Yes, Your Honor, I believe the  
12 deadline is today, and I'll file as soon I get  
13 back to the office.

14 THE Court: All right. You understand what's  
15 going to happen, Mr. Lawrence?

16 MR. Lawrence: No, sir.

17 THE Court: They're filing a dispositive motion  
18 to say that you need to be kicked out of court on  
19 summary judgment, because you, for one reason or  
20 another, do not have a case. You will then have  
21 fifteen days from the time you get this motion for  
22 summary judgment, to respond to it.

23 MR. Lawrence: Okay.

24 THE Court: I will then make my report and  
25 recommendation without any further hearing.

1 MR. Lawrence: Okay. Also, Your Honor at this  
2 time I talked with the defendant about me  
3 entering - - I have a counsel that I - - that he was  
4 going to file the entry into my case, and then  
5 because we were coming up to the pretrial brief  
6 being required, I filed the motion for an  
7 enlargement of time per Rule 6.

8 THE Court: When did you do that?

9 MR. Lawrence: On the 2<sup>nd</sup>. And so you may not  
10 have gotten that as of yet, but that's a motion out  
11 there also. And I did confer with the defendant on  
12 me filing a motion to enlargement of time. And this  
13 will give my--

14 THE Court: Where did you file that motion?

15 Where?

16 MR. Lawrence: In Augusta. No, excuse me  
17 Atlanta.

18 THE Court: Good. Well, the Southern District  
19 of Georgia will deal with it however the Southern  
20 District of Georgia deals with things. We're in  
21 South Carolina.

22 MR. Lawrence: Yes, sir.

23 THE Court: Therefore, it will not get to me.

24 It must be another case you have going on in  
25 Georgia, because motions in this case have to be

1 filed Aiken, Columbia, Greenville, Rock Hill,  
2 Florence, Beaufort.

3 MR. Lawrence: Okay. Well, it was submitted for  
4 the Aiken Court, but because I lived in Atlanta,  
5 that's where I filed it.

6 MR. Thompson: He might mean that's where he  
7 mailed it from.

8 MR. Lawrence: That's where I mailed it, served  
9 mail from.

10 THE Court: All right, that's where you mailed  
11 it.

12 MR. Thompson: Yes, sir.

13 THE Court: It's not here yet.

14 MR. Thompson: No, sir.

15 THE Court: You want an extension of time to do  
16 what?

17 MR. Thompson: To provide pretrial brief and to  
18 answer his -- his depository submitted to the Court  
19 for dismissal.

20 THE Court: You've got fifteen days, that's two  
21 and a half -- two weeks. Is that enough time? You  
22 don't -- Do you have a copy of that dispositive  
23 motion with you, or is it here?

24 MR. Thompson: No, Your honor, I don't.

25 THE Court: Serve it upon Mr. Lawrence by most

1 expeditious manner you can, including express mail  
2 Federal Express, UPS or all of the above.  
3 MR. Thompson: I'd be happy to do that.  
4 THE Court: All right. You will get it very  
5 soon; probably tomorrow.  
6 MR. Lawrence: Yes, sir.  
7 THE Court: You'll have fifteen days to respond.  
8 Is that sufficient time?  
9 MR. Lawrence: No, sir.  
10 THE Court: Why not?  
11 MR. Lawrence: Because I would have an attorney  
12 entry to help me out.  
13 THE Court: How much time do you need?  
14 MR. Lawrence: At least thirty days, at least.  
15 Because he has gather more of the information and  
16 to write the defense --  
17 THE Court: Tell me about this lawyer you're  
18 going to hire. Have you hired him?  
19 MR. Lawrence: Yes, well, we've been talking,  
20 and he was waiting --  
21 THE Court: Wait. That's kind of a yes or no  
22 question. Have you hired him? Or her?  
23 MR. Lawrence: Him.  
24 THE Court: Yes?  
25 MR. Lawrence: Yes.

1 THE Court: Yes.  
2 MR. Lawrence: Yes.  
3 THE Court: Have you paid him? Yes or no?  
4 MR. Lawrence: Consignment. He's working on  
5 consignment basis  
6 THE Court: On consignment basis.  
7 MR. Lawrence: Yes.  
8 THE Court: Okay. So he's on board.  
9 MR. Lawrence: Yes, sir.  
10 THE Court: Is he a South Carolina lawyer?  
11 MR. Lawrence: No, sir.  
12 THE Court: Where does he practice?  
13 MR. Lawrence: In Atlanta.  
14 THE Court: In Atlanta.  
15 MR. Lawrence: Yes, sir, but his firm does have  
16 a bar for South Carolina, and he may file vice hac  
17 also, if not. And I've made him aware that the case  
18 is in South Carolina court.  
19 THE Court: All right. Here's what's going to  
20 happen. You file your response to the dispositive  
21 motion within fifteen days, if you are pro se. If a  
22 lawyer makes an appearance, he will have until  
23 February the 3<sup>rd</sup> in which to file a response. So  
24 of, in fact, you do have a lawyer who is admitted in  
25 this court, then he will have until the 3<sup>rd</sup>. If

1 not, you will have fifteen days. Do you understand?

2 MR. Lawrence: Yes, sir.

3 THE Court: Anything else? So that motion, if

4 and when it gets here, will be marked granted,

5 conditionally.

6 MR. Lawrence: Yes, sir.

7 THE Court: All right. Your motion to compel,

8 I've already ruled on, each individual item.

9 Exhibits A, B, C, D, E, and F.

10 MR. Lawrence: Yes, sir.

11 THE Court: Anything further?

12 MR. Lawrence: I have a - - trying to keep - -

13 keeping track with the pretrial order, I'm also

14 requesting the submission of the deposition

15 questions, as opposed to some of the stuff that we

16 were trying to provide an enlargement of time,

17 because I did receive - - all my information has come

18 here late, Your Honor, everything. And so that

19 means it puts me behind in trying to prepare

20 pretrial, prepare anything for anybody to come in.

21 I just received my depositions about two weeks ago.

22 THE Court: From the court reporter?

23 MR. Lawrence: From the court reporter.

24 THE Court: Did you ask her for expedited

25 MR. Lawrence: I asked, I've asked, and - -

1 THE Court: Did you - - listen to me. Did you  
2 ask her for expedited service to get them?

3 MR. Lawrence: No, I didn't

4 HE Court: Okay. In other words, what you want  
5 me to do is to change all the rules around, change  
6 the pretrial order around, let you open up discovery  
7 again. Is that right?

8 MR. Lawrence: No, sir.

9 THE Court: What do you want?

10 MR. Lawrence: I just wanted to be - - in order  
11 for me to prepare and stay within the guidelines of  
12 this Court's scheduling order, I needed certain  
13 information to review and then prepare.

14 THE Court: You want me to open up discovery  
15 again; is that what you want?

16 MR. Lawrence: No, sir, not at this point.

17 THE Court: Okay. That's good, because I'm not  
18 going to do that. We're on target. If you get your  
19 documents and they are relevant to the motion for  
20 summary judgment, then you can include them.

21 MR. Lawrence: Yes, sir.

22 THE Court: You can also include affidavit or  
23 affidavits, depending upon how many you have  
24 That's the way you respond to summary judgment. If  
25 your lawyer's admitted to this court, he will know

1 how to do this.  
2 MR. Lawrence: Yes, sir.  
3 THE Court: All right. Now, you, if you're pro  
4 se, have fifteen days.  
5 MR. Lawrence: Yes, sir.  
6 THE Court: If you have a lawyer. February 3rd.  
7 MR. Lawrence: Yes, sir.  
8 THE Court: Anything further?  
9 MR. Thompson: No.  
10 THE Court: Good luck to you.  
11 MR. Lawrence: Okay.  
12 THE Court: You also understand this case has  
13 been reassigned to Judge Floyd.  
14 MR. Thompson: No, I didn't, Your Honor, thank  
15 you. I think I did get a notice, I just have'nt  
16 noted it in the file.  
17 THE Court: Okay. A very delightful judge with  
18 vast experience who sits in Greenville.  
19 MR. Thompson: Thank you, Your Honor.  
20 MR. Lawrence: Can I - - One other question, Your  
21 Honor. Because of the motion that he filed, will  
22 there be any subsequent scheduling order?  
23 THE Court: No, this follows the scheduling  
24 order.  
25 Mr. Lawrence: Okay

1 THE Court: Today is the day he has to file  
2 dispositive motions. He's going to file it today.  
3 MR. Lawrence: Yes, sir.  
4 THE Court: He's on target. He is following the  
5 rules. He has till today to do it.  
6 MR. Lawrence: Yes, sir.  
7 THE Court: Okay?  
8  
9 (Court adjourned at 10:35 a.m.)

1           REPORTER'S CERTIFICATE

2

3   I, Debra L. Potocki, RDR, CRR, court approved  
4   transcriber, certify that the foregoing is a correct  
5   transcript from the official electronic sound  
6   recording of the proceedings in the above – entitled  
7   matter, to the best of my ability.

8

9

10

11

“s/Debra L. Potocki”

12

Debra L. Potocki RMR, CRR

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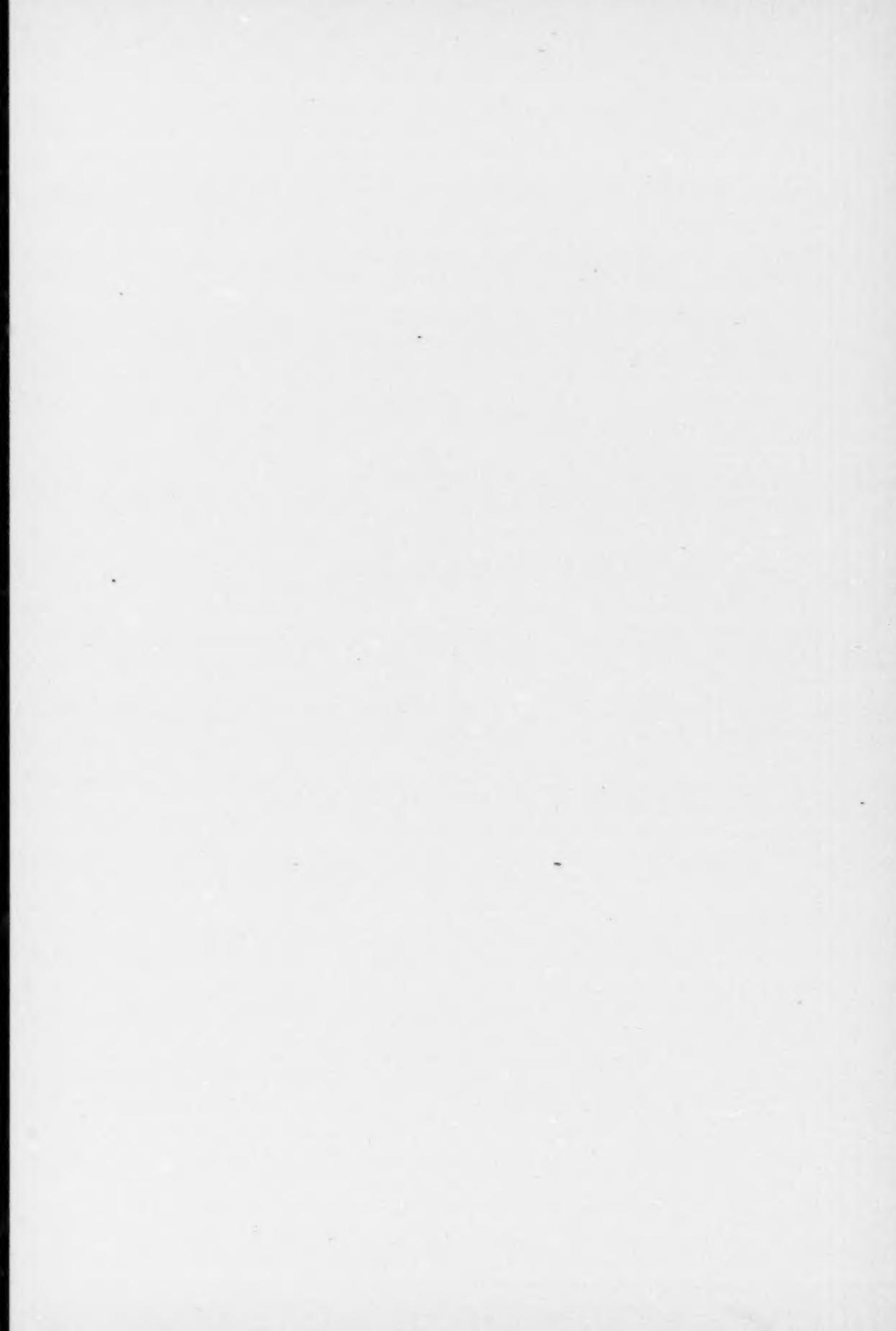
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1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 DISTRICT OF SOUTH CAROLINA  
2 CHRISTOPHER LAWRENCE  
3 vs  
4 WESTINGHOUSE SAVANNAH  
5 RIVER COMPANY, LLC 03 - CV - 484  
6  
7

8 Motion Hearing in the above matter held on  
9 Monday, June 14, 2004, commencing at 12:20  
10 p.m., before the Hon. George C. Kosko, in the  
11 United States Courthouse, 85 Broad Street,  
12 Charleston, South Carolina, 29401.

13  
14

15 APPEARANCES:

16 CHRISTOPHER LAWRENCE, 2740 Highpoint Road,  
Snellville, GA, appeared pro se.  
17 CHARLES F. THOMPSON, JR., ESQ., 1527  
18 Blanding Building, Columbia, SC, appeared for  
defendant.

19  
20

21 RECORDED BY DENNIS PATRICK, ESR OPERATOR  
22 TRANSCRIBED BY DEBRA L. POTOCKI, RDR, CRR  
85 Broad Street, Charleston, SC, 29401  
23 843-723-2208  
24 Proceedings recorded by electronic sound recording ;  
25 Transcript produced by computer-aided transcript

1 The court: This is the case of Christopher  
2 Lawrence versus Westinghouse Savannah River Company,  
3 case number 1:03-484.  
4 There are pending before the court four motions  
5 in this matter; motion by Westinghouse for summary  
6 judgment, motion by Westinghouse to strike notice,  
7 and a motion response filed on February the 11th, a  
8 motion by Westinghouse for sanctions, and a motion  
9 by the plaintiff to dismiss without prejudice.  
10 This case was removed from State Court by the  
11 defendants. The State Court action is the only  
12 complaint in this matter, is that correct?  
13 MR. Lawrence: That's partially correct.  
14 THE COURT: No, sir. Is it correct --  
15 MR. Lawrence: Yes.  
16 THE COURT: -- yes or no ?  
17 MR. Lawrence: Yes, it is.  
18 THE COURT: All right, sir. Mr. Lawrence, I  
19 notice in reviewing your pleadings, that someone who  
20 has been in and around or through or to or graduated  
21 from law school, has been preparing some of these  
22 responses, because the language is that which  
23 attorneys use. However, such attorney has chosen  
24 not to represent you, apparently, because there's  
25 been no appearance made by an attorney. Is that

1 correct ?

2 MR. Lawrence: No, sir.

3 THE COURT: You're doing this all on your own ?

4 MR. Lawrence: I have some associates that I  
5 talk to - -

6 THE COURT: Okay.

7 MR. Lawrence: - - from time to time.

8 THE COURT: So I was correct in my belief that  
9 someone with legal training is advising you.

10 MR. Lawrence: Yes, sir.

11 THE COURT: All right. As I review the  
12 complaint, the only complaint that was filed, it  
13 would appear to me that it does not allege Title VII  
14 issues. It appears a rather straight forward  
15 contract action.

16 This Court, of course, has the power at any time  
17 sua sponte to order the Court - - order the matter  
18 back to State Court, what we call remand. I am not  
19 making a decision on that matter at this time.

20 There is, however, the motion by the plaintiff  
21 to dismiss the case without prejudice. I was  
22 informed that the defendants, through their  
23 pleadings, opposed this motion. I then receive  
24 on - - this morning, a facsimile from the plaintiff,  
25 in which he withdraws his motion to dismiss without

1 prejudice.

2 I would call both parties' attention to the wire  
3 basket in the well of the courtroom. That  
4 represent the trees that have given their life so  
5 that this case might go forward . This is not a case  
6 deserving of a full file cabinet of paperwork. It  
7 is not that complex a case. It has been made  
8 complex because of the multiple motions, some in  
9 time and some out of time, that have been filed and  
10 then had to be responded to. I find that to be  
11 absolutely a waste of judicial time as well as a  
12 waste of time on behalf of the plaintiff and the  
13 defendant to go through all of this exercise.

14 So what I am going to do, since the motion to  
15 dismiss has been without prejudice, was not agreed  
16 to by the defendant, and has now been withdrawn by  
17 the plaintiff , I will mark motion number 56 as  
18 withdrawn, or now moot.

19 I will also deny motions number 49 filed by  
20 Westinghouse for sanctions and to strike the  
21 response, leaving only motion number 40, summary  
22 judgment, as the motion before the Court.

23 Again I will recite that I am holding --  
24 withholding my decision as to whether to remand this  
25 matter back to State Court, where it probably should

1 have stayed in the first place, based upon the  
2 allegations in the complaint.  
3 However, if I choose to go forward on the  
4 summary judgment, and issue a report and  
5 recommendation, I want to go forward with an agreed  
6 upon statement of facts. In other words, we are not  
7 going to laboriously cull through those thousands of  
8 pages of documents in that wire basket in order to  
9 determine the kernel of truth which we need to make  
10 a decision.

11 So in furtherance of that, here is what we're  
12 going to do. Immediately upon completion of this  
13 hearing, counsel for the defendant and the plaintiff  
14 shall confer, and you will agree upon a statement of  
15 undisputed facts. This statement will be -- will  
16 not be argumentative, but will merely state the  
17 facts upon which there is no dispute. This  
18 consultation will be conducted in good faith, and  
19 upon the conclusion of it, the parties will recite  
20 into the record, in this courtroom, those facts  
21 which they agree to, which is to say those facts  
22 which are not in dispute. Only the facts necessary  
23 for this Court to determine the motion for summary  
24 judgment will be included in this statement of  
25 undisputed facts. All the irrelevant material will

1 be excluded. We will deal merely with the facts of  
2 the contract, if there is one; handbook, of which  
3 there is not one; the employment and the  
4 termination.

5 Now, if either of the parties verily believe  
6 that the Court should be made aware of facts which  
7 are contested, that is, facts that are not agreed  
8 upon by the parties, each party shall file with the  
9 Court, no later than 12:01 p.m., Friday, July --  
10 Friday, June the 18th, a statement of disputed  
11 facts.

12 The statement will follow in this form. One,  
13 each fact shall be separately stated and numbered.  
14 Two, each fact shall provide a clear reference or  
15 citation to the location of the fact in the  
16 documents that are filed in this case with this  
17 Court. The citation will state the name of the  
18 document, the date it was filed, the page upon which  
19 the fact can be found, and the paragraph number  
20 where it can be located.

21 The statement of facts shall be served upon the  
22 opposing party by such means so as to insure it is  
23 received on or before the filing deadline. You may  
24 accomplish this service either by express mail,  
25 facsimile or email. An affidavit shall be filed

1 thereafter with the Court setting forth the method  
2 of delivery to the opposing party.

3 The person receiving this statement of contested  
4 facts shall have until 12:01 p. m. on Wednesday, June  
5 the 23rd, to file a response to the disputed fact.

6 This document shall follow the same format as I've  
7 mentioned above. The defendant shall resubmit a  
8 brief, arguing the reasons it is entitled to summary  
9 judgment. This brief will be filed on or before  
10 12:01 p.m., Friday, June the 25th, and service shall  
11 be made as I have previously described.

12 The plaintiff shall file a responsive brief to  
13 the defendant's motion for summary judgment on or  
14 before 12 : 01 Friday, July the 2nd.

15 Should the defendant elect to file a reply  
16 brief, it will be filed on or before 12 : 01,  
17 Wednesday, July the 7th. The local civil rules of  
18 civil procedure -- I ' m going to give you an order  
19 with these dates in it.

20 MR. Lawrence: Okay.

21 The Court: The local rules of civil procedure  
22 shall be strictly adhered to, including but not  
23 limited to the length of the briefs. These briefs  
24 will not kill any more trees than are necessary.  
25 Brief means brief; 35 pages maximum, ten pages

1 optimum.

2 In addition, a copy, just the one page of any of  
3 the documents filed with this Court , shall be  
4 affixed to the brief, which shows a particular fact  
5 upon which you want to argue, outside the agreed  
6 statement of facts.

7 It is anticipated by me that once the two of you  
8 agree that these are the undisputed facts, there  
9 will probably be very few material facts that are in  
10 dispute that need to be addressed. That's why I  
11 think this is going to be a relatively easy  
12 exercise.

13 In other words, I truly believe that having once  
14 brief this matter, that you can rearrange the  
15 brief and resubmit it with almost no additional  
16 effort , except to remove the extraneous, and I do  
17 mean much extraneous material.

18 All right ? Any questions ?

19 MR. Lawrence: Yes, sir.

20 THE Court: Just one second. I want to check  
21 something here. Okay.

22 MR. Lawrence: Yes sir, Your Honor, the  
23 schedule that you just provided to us to conform by,  
24 will I get a breakdown of that so I can follow it  
25 completely ?

1       THE COURT: Mr. Clerk, would you please file my  
2 order. Here are three additional copies. Stamp it  
3 filed and give it to the parties.

4       MR. LAWRENCE: Thank you, sir.

5       THE COURT: Now, I'm going to leave you in this  
6 courtroom with our deputy clerk doing his homework  
7 that he has to do, and you will work together to  
8 come up with this statement of disputed facts. How  
9 are you going to do that? I don't care how you do  
10 it.

11      I will give you a suggestion. It is merely a  
12 suggestion. I would take the defendant's memoranda  
13 in his motion for summary judgment, it has a factual  
14 predicate to it. I would begin at the end of that  
15 on page 11, and work backward to establish the facts  
16 that are agreed upon.

17      For instance, first agreed upon fact, the  
18 lawsuit was filed and served on January 14, 2003.

19      Yes or no?

20      MR. LAWRENCE: Yes.

21      THE COURT: Good. You've already got agreement  
22 on one issue.

23      The EEOC issued a right to sue letter on  
24 September the 13<sup>th</sup>, 2002. Agreed? Yes or no. Work  
25 backwards from that.

1       Mr. Lawrence, do you have a copy of the  
2       defendant's motion for summary judgment with you?  
3       MR LAWRENCE:     Yes sir, I have the information  
4       in my car.

5       THE COURT:    Well, good. I've got extra copies  
6       for you to write upon. You can begin to work, I  
7       backwards is the best way. When you reach  
8       something that you cannot agree upon, confer in good  
9       faith, attempt to resolve it. If you cannot resolve  
10      it, put it aside as a contested fact and move on to  
11      one you can agree upon.

12      At the conclusion of this discussion, then you  
13      will recite into the record, and I will come back  
14      for it, these undisputed facts. And I will rely  
15      upon those facts, if I decide to issue a report and  
16      recommendation on the summary judgment motion.

17      Should I decide to remand it, you will merely  
18      get an order from me - - I might add it's a  
19      nonappealable order - - of remand.

20      All right? Any questions?

21      MR. THOMPSON: No, Your honor.

22      THE COURT:    Good luck. In case you decide to  
23      get into any kind of fight, this man carries a Glok.  
24      He is an expert marksman, and Fred will shoot  
25      straight.

1 MR. THOMPSON: Not even a cross word, Your  
2 Honor.

3 THE COURT: Good.

4 (Court adjourned.)

5 \* \* \*

6 (Court reconvened.)

7 THE COURT: Okay. How are we doing? Have a  
8 seat.

9 MR. THOMPSON: We have a number of facts I think  
10 we've agreed to.

11 THE COURT: Okay. Denny, are you ready to copy  
12 these? Mr. Thompson, you're going to reduce these  
13 to writing after they've been dictated into the  
14 record, correct?

15 MR. THOMPSON: I can do that, yes sir.

16 THE COURT: Yes, sir, okay.

17 MR. THOMPSON: Plaintiff, Christopher Lawrence,  
18 was first employed by WSRC in 1989.

19 At the time of his employment in 1989, he was  
20 given two years service credit from his prior  
21 employment with Morrison-Knudsen.

22 WSRC assumed the interest of duPont Corporation  
23 when WSRC took over management of the Savannah River  
24 site in 1989.

25 WSRC operates the Savannah River site under a

1 contract with the Department of Energy.

2 The DOE contract requires WSRC to establish  
3 local policies, including personnel policies.

4 WSRC has a personnel policy manual called the 5D  
5 manual.

6 WSRC uses a system of contacts, and that's in  
7 quotes, quote, "contacts," end quote, to document  
8 some interactions between supervisors and  
9 subordinates. These can include disciplinary  
10 contacts. It could also be used to document  
11 something positive the employee did. Or, it could  
12 be used to caution an employee about a management  
13 concern.

14 Other types of disciplinary action used at WSRC  
15 include suspension, probation, final employee  
16 commitment and termination

17 In 1998, Lawrence had a medical absence related  
18 to a bunionectomy. He informed his supervisor he  
19 would be out of work for eight weeks. The WSRC  
20 medical department felt eight weeks was excessive;  
21 however, advised management not to do anything until  
22 Lawrence brought a doctor's note in.

23 Lawrence did bring in a doctor's note that had  
24 working restrictions, but did not address the issue  
25 of return to work.

1 Lawrence also asserted he should not be expected  
2 to come to work because he could not drive a manual  
3 transmission car.

4 In February of 2000, Lawrence's department  
5 suffered a reduction in force. Because of his  
6 seniority, he was allowed to transfer to another  
7 division.

8 By April 2000, Lawrence was warned that  
9 unexcused absences would result in discipline, and  
10 future absences - - I'm sorry, I might have to ask  
11 him - - Did we agree to that or not? Would be  
12 limited to genuine emergencies?

13 MR LAWRENCE: We agreed to that.

14 MR. THOMPSON: Then I have to skip up to July  
15 2000. On July 28, 2000, Lawrence was absent from  
16 work to get blood work done in preparation for a  
17 second bunionectomy

18 When he did return to work, he was excused to go  
19 home by the WSRC medical department because he said  
20 he was being affected by medication.

21 WSRC management and Dr. Botnick documented that  
22 there were concerns - -

23 THE COURT: Doctor who?

24 MR. THOMPSON: Botnick, B-O-T-N-I-CK. He's a  
25 WSRC doctor. And they made documented statements

1 that they were concerned Lawrence's outside business  
2 was interfering with his WSRC employment. Dr.  
3 Botnick made comments to this effect in Lawrence's  
4 medical file,

5 MR. LAWRENCE: Can I add to what we agreed to,  
6 also on that, we also agreed to my employment file,  
7 too, because he made - -

8 MR. THOMPSON: Okay, to the medical and  
9 employment file.

10 Dr. Botnick's position regarding Lawrence's  
11 attendance was negative. After Lawrence went out on  
12 medical leave related to this second operation, Dr.  
13 Botnick began calling Lawrence the week following  
14 his surgery to obtain information about his leave.  
15 Dr. Botnick felt that three weeks leave for the  
16 operation should have been more than sufficient to  
17 recover.

18 Dr. Botnick located Lawrence's personal  
19 physician, and found out that Lawrence was going to  
20 be evaluated on September 7<sup>th</sup>. This would be 2000.

21 On September 11<sup>th</sup>, Lawrence's supervisor, Ralph  
22 Thigpen, T-H-I-G-P-E-N, made calls to Lawrence at  
23 his home, his mother's home and his ex-wife's home  
24 to obtain information regarding his leave.

25 When the supervisor reached Lawrence, Lawrence

1 said the supervisor was not a doctor, and could not  
2 instruct him to return to work without talking to  
3 Lawrence's doctor.

4 Sometime after September 11<sup>th</sup>, WSRC received a  
5 note from Lawrence's doctor that listed working  
6 restrictions, but did not address whether he could  
7 return -- whether or not he could return to work.

8 Dr. Botnick reached Lawrence on September 12<sup>th</sup>.  
9 Lawrence stated he had not been released by his  
10 physician. The September 11<sup>th</sup> doctor's not given  
11 to WSRC contained only work restrictions.

12 Lawrence told his supervisor he had a medical  
13 excuse until October 3<sup>rd</sup>. WSRC management wanted  
14 the WSRC human relations department to intervene at  
15 this point, because they said they had pushed the  
16 issue as far as they could without guidance.

17 Lawrence did not return to work until September  
18 22<sup>nd</sup>. The day he returned to work, his supervisor  
19 found him asleep. Lawrence stated he was asleep due  
20 to medication.

21 On September 29, Lawrence was placed on  
22 probation.

23 Dr. Botnick did not review at any time  
24 Lawrence's personal physician's medical file;  
25 however, Dr. Botnick did call Lawrence's physician.

1 on several occasions, and Lawrence did not ever give  
2 Dr. Botnick his personal medical records.  
3 On August 26, 2001, Lawrence called his  
4 supervisor to report he would be late, due to his  
5 son's sickness.  
6 The next day, August 27, 2001 Lawrence called  
7 the WSRC control room to inform WSRC he would be out  
8 for two or three additional days to a sinus  
9 infection.  
10 Lawrence's supervisor, Ralph Thigpen, reported  
11 to higher management that Lawrence had disobeyed  
12 instructions about whom to contact regarding  
13 absences. Thigpen tried to call Lawrence, Lawrence  
14 called the supervisor back, they had an angry  
15 conversation, during which Lawrence asked, are you a  
16 dumb ass? Thigpen also raised his voice during the  
17 conversation.  
18 WSRC decided to terminate Lawrence's employment.  
19 On September 1, 2001, Lawrence was escorted off  
20 the site by security personnel. Lawrence's  
21 termination form is dated August 30<sup>th</sup>, 2001.  
22 Lawrence filed a charge of discrimination on  
23 July 19, 2002.  
24 The EEOC issued a notice of right to sue on  
25 September 13, 2002.

---

1      This lawsuit was filed and served on January  
2 14th, 2003.

3      WSRC has a contractual obligation with DOE to  
4 follow the DOE contract.

5      WSRC has an internal policy labeled policy 2.9,  
6 that contains an exit interview procedure. Mr.  
7 Lawrence did not receive the exit interview  
8 procedure.

9      WSRC policy 2.9 contains a checkout procedure.  
10 Mr. Lawrence did not receive the checkout procedure.

11     WSRC has a document which employees have been  
12 required to sign from time to time that lists  
13 conduct an employee can be disciplined for.

14     And finally, there is an order entitled the DOE  
15 order 350.1 that is referred to and incorporated in  
16 the DOE WSRC contract.

17     And those were the facts that we were able to  
18 agree to, Your Honor.

19     THE COURT: Okay. What I did not hear was a  
20 statement as to whether or not the plaintiff was an  
21 at will employee. Is that a fact in dispute?

22 MR. LAWRENCE: It is an at will position, but  
23 altered by the writings of the employee handbook and  
24 DOE contract.

25 THE COURT: That's my second question. I heard

1 nothing in there about a handbook. Is there a  
2 handbook?

3 MR. LAWRENCE: By the manual is the -- one of  
4 the manuals by which the contractor, primary  
5 contractor, Westinghouse, was to follow.

6 THE COURT: I heard the word personnel manual.  
7 Is that the same thing as an employee handbook?

8 MR. LAWRENCE: Yes, sir. Can I clarify?

9 MR. THOMPSON: I think that would be an employee  
10 handbook, I regard that as a descriptive term, Your  
11 Honor. It's a policy manual that employees have  
12 access to.

13 THE COURT: The word handbook is used in the  
14 case law extensively as a word of art. Now, if  
15 there is such a handbook that provides an employment  
16 contract between the employee and the defendant, I'd  
17 like to know about it. If there's no such contract,  
18 by virtue of this handbook, I need to know about  
19 that also.

20 MR. LAWRENCE: The 5B manual, WSRC's position  
21 certainly would be, is not a contract of employment.

22 THE COURT: And you say it is a contract of  
23 employment.

24 MR. LAWRENCE: The performance of.

25 The COURT: All right, that will be a subject

1 that needs to be briefed, because it is very  
2 important in employment law, whether it is an  
3 at will employee, or an at will employee who is  
4 governed by the contractual relations established by  
5 a handbook.

6 All right. How many facts are there going to be  
7 in dispute; many or a few?

8 MR. THOMPSON: I would say many, Your Honor.  
9 There are a number of facts concerning his history  
10 of attendance problems that we could not agree.

11 THE COURT: All right.

12 MR. LAWRENCE: As it relates to policy, we  
13 couldn't establish - - Westinghouse has always, since  
14 it's a Government contractor, working for the  
15 Government, has always operated on the guided rule  
16 for order or policy, or during certain specific  
17 times there were no policy in place for consistency  
18 and that is DOE mindset in running this Government  
19 facility for consistency purposes.

20 THE COURT: Are you taking the position you're a  
21 third-party beneficiary of that Government policy?

22 MR. THOMPSON: I think that - -

23 MR. LAWRENCE: Yes.

24 MR. THOMPSON: - - is what he means.

25 THE COURT: Is that an issue in dispute, whether

1 or not he is, in fact, a third-party beneficiary of  
2 a DOE operating procedure?

3 MR. THOMPSON: It would be an issue -- a  
4 disputed issue. I think that's a legal conclusion.

5 THE COURT: I believe it is, too. But the point  
6 is, what are the facts giving rise to it? Are there  
7 factual predicates to it?

8 MR. THOMPSON: I think we have most of those  
9 facts, Your Honor, I think that are the main facts,  
10 we've agreed on. There is such a contract that the  
11 DOE and WSRC, and it does require personnel policy  
12 manual -- personnel policies.

13 MR. LAWRENCE: That incorporates for consistency  
14 of -- from attendance purposes.

15 THE COURT: Then the question becomes, are the  
16 policies, do they rise to the level of a contract.

17 MR. THOMPSON: No, Your Honor, they do not.

18 THE COURT: That's a legal issue but it's based  
19 upon a factual predicate. I look forward to seeing  
20 that in a brief.

21 All right, headway has been made. If you will  
22 reduce those to writing, we will file them, and  
23 there will be no need to further refer to them as  
24 far as the citations go, because those now have been  
25 agreed to as facts. Neither side needs to go any

1 further into that issue. In your briefs, if you  
2 decide to argue disputed facts, then the citations  
3 must be included. You understand what I mean?  
4 MR. LAWRENCE: It's what he cites versus --  
5 THE COURT: Yes. In both of your briefs, for  
6 instance, you have agreed that the light was red.  
7 If for some reason you want to now say in your brief  
8 the light was yellow, you need to cite the authority  
9 that would prove it was yellow. However, if you're  
10 going to cite in it that it's green, I will accept  
11 that, because you've agreed to the fact that it's  
12 green.

13 That's a very simplistic explanation of what  
14 you've just done. All right? This briefing order  
15 is pretty tight, but I think having written the  
16 briefs once, it will not be difficult for you to  
17 readdress these issues. Anything else?

18 MR. THOMPSON: No, Your Honor, not from us.

19 MR. LAWRENCE: I have one last -- so he will  
20 provide to me the agreements that we just jotted  
21 down, in the form of a brief to the Court?

22 THE COURT: It will be a document saying these  
23 are the agreed facts, and it will agree to what we  
24 have on the tape recording.

25 MR. LAWRENCE: Yes, sir.

1       THE Court: And you will then have that as your  
2 core basis upon which you can write your brief.

3       All right? Anything else? Remember the dates.  
4 You've got a copy of the order. The facts that you  
5 now consider material facts -- I really am not  
6 concerned about what happened to you in 1993,  
7 because I don't believe that is material to what  
8 happened in the year 2000. Unless you think it's  
9 material in some fact, put it in there. In other  
10 words, leave out all the extraneous material. We'll  
11 deal with the current issue.

12       MR. Lawrence: Yes, sir.

13       THE Court: We'll deal with the termination,  
14 we'll deal with the time in which you had from the  
15 time that you got the right to sue to the time you  
16 brought the suit, deal with those issues. You know  
17 what issues he's going raise, all you have to do is  
18 look at his brief.

19       MR. Lawrence: Yes, sir.

20       THE Court: He's laid them out for you in  
21 detail. And likewise, you know what issues he will  
22 respond to. So pretty much ought to be just a one  
23 brief exercise. But if it requires a response,  
24 we'll take a response.

25       All right. Anything further?

1 MR. THOMPSON: No, Your Honor.

2 THE COURT: Good luck to you.

3 MR. THOMPSON: Thank you, sir.

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APPENDIX I  
105A

1      REPORTER'S CERTIFICATION

2

3      I, Debra L. Potocki, RDR, CRR, Court approved  
4 transcriber, certify that the foregoing is a correct  
5 transcript from the official electronic sound  
6 recording of the proceedings in the above-entitled  
7 matter, to the best of my ability.

8

9

10

11      "s/ Debra L. Potocki"

12      Debra L. Potocki, RMR, CRR

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APPENDIX I

106A



**SAVANNAH RIVER OPERATIONS OFFICE (SR)  
PERFORMANCE EVALUATION AND MEASUREMENT PLAN  
FOR  
WESTINGHOUSE SAVANNAH RIVER COMPANY LLC  
CONTRACT NO. DE-AC09-96SR18500**

**EVALUATION PERIOD:  
October 1, 2000, through September 30, 2006**

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**Greg Rudy  
Manager, SR**

**Date** \_\_\_\_\_

## GLOSSARY

**FEE ADMINISTRATOR** - A DOE-SR individual within the Contract Management Division who maintains the official files regarding PBIs, fees and fee payments. The Administrator processes Baseline Change Proposals and all fee payments requiring approval of the Contracting Officer/HCA.

**LESS THAN ACCEPTABLE PERFORMANCE** - Less than acceptable performance shall be considered to exist when: (1) defects exist in a service/product provided and the defects are of such a magnitude to materially affect the form, fit, function, value or usefulness of the service/product; or (2) significant events/defects or adverse trends indicate fundamental and serious programmatic deficiencies exist in the Contractor's management and/or systems.

**PERFORMANCE BASED INCENTIVE (PBI)** - A clear, objective goal that accurately describes and/or defines a task, or event which is a high priority for the site which can be objectively measured. The PBI criteria should be based upon the achievement of cost savings, efficiencies, program achievements, advancements of a major goal and/or event, meeting critical schedule requirements, or be a HQ critical emphasis area. Completion should be entirely within the control of WSRC.

**PERFORMANCE OBJECTIVE** - A category of performance which will be evaluated under a Performance Area. Normally it encompasses the performance of a total function or program.

**PRACTICES** - Activities that are consistent with commercial nuclear industry standards, generally accepted business practices, DOE directives, and/or SR Directive Implementation Instructions (DII), and Federal regulations and requirements.

**SPECIAL PERFORMANCE AREA (SPA)**- SPAs are a subset of a PBI. With SPAs, although clear goals that accurately describe and/or define a task, or event which is a high priority for the site can be established, the work must be evaluated

subjectively, as opposed to objectively, due to the nature of the work involved. Completion should be entirely within the control of WSRC.

**Contract No. DE-AC09-96SR18500 Modification No. M068**

**Part I - The Schedule**

**Section B SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 SERVICES BEING ACQUIRED**

The Contractor shall, in accordance with the terms of this Contract, provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to providing its best efforts so as to carry out in an efficient and effective manner all necessary and related services to manage and operate the Government-owned Savannah River Site, located near Aiken, South Carolina, as described in Section C, Statement of Work, or as may be directed by the Contracting Officer within the scope of this Contract.

The Work Authorization and Control Process and the Change Control process set forth in Section II of the Savannah River Site (SRS) Management Plan are hereby incorporated and made a part of this contract.

**B.2 ESTIMATED COST AND AVAILABLE FEE**

**(a) Estimated Cost**

The estimated cost of the contract is the total of funding provided from October 1, 1996 to September 30, 2000, which totals \$5,383,459,753.41 plus an estimated budgetary cost of \$8,400,000,000 for the period October 1, 2000 through September 30, 2006, for a total estimated cost of \$13,783,459,753.41.

The above estimated cost excludes any costs for emerging nonproliferation projects and the Estimated Cost for each year of performance shall be established in the Annual Operational Plan which is incorporated into the contact by reference.

**(b) Fee:**

The Maximum Available Fee shall be \$345,000,000 over the

contract term, subject to equitable adjustment as provided for under the terms of this contract. For fiscal years 2002 through 2006, any Comprehensive Performance Special Performance Area (similar to the 2001 SPA) shall range from \$11.5 million to a minimum of \$5 million for any one year, as mutually agreed to by the parties.

The Contractor shall reimburse (by direct reimbursement or by off-sets against PBI payments) the Government for any fee amount drawn down but not earned as a result of fee determinations by the SR Manager/Senior NNSA Official. Any reimbursements due the Government shall be made within 60 calendar days of the date the debt was established or shall be subject to interest as described in the clause in Section I entitled, FAR 52.232-17 Interest (Jun 1996).

### **B.3 AVAILABILITY OF APPROPRIATED FUNDS**

Except as may be specifically provided to the contrary in the Contract Clause entitled "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which the DOE may legally spend for such purposes.

### **B.4 OBLIGATION OF FUNDS**

Pursuant to the Contract Clause entitled "Obligation of Funds," the total amount obligated by the Government with respect to this Contract is \$5,875,769,181.25 (as of Modification No. A067).

## **Part I - The Schedule Section C**

### **DESCRIPTION/SPECIFICATION/WORK STATEMENT**

#### **DESCRIPTION OF WORK AND SERVICES**

##### **STATEMENT OF WORK C.1    OVERVIEW**

The general management goals and objectives for the Savannah River Site (SRS) are outlined in the SRS Strategic Plan required by the Government Performance and Requirements Act. The Plan addresses the environmental stewardship, nuclear weapons stockpile stewardship and nuclear materials stewardship missions which includes the current National Nuclear Security Administration goals and objectives. Performance expectations of this contract are generally defined in the SRS Strategic Plan Focus Areas and specifically defined in the Annual Operational Plan. Both of these documents, and superseding versions thereto, are incorporated by reference into this contract. The Contractor shall safely and cost-effectively implement these management objectives.

a. The Contractor shall integrate and manage the safe and effective operation and maintenance of existing and new facilities of the U.S. Department of Energy (DOE) at the Savannah River Site (SRS), situated within Aiken, Barnwell and Allendale Counties of South Carolina to meet the general management objectives. The Contractor shall use systems engineering techniques to integrate the resources and activities of the SRS. The Contractor is responsible for integrating and executing all work under this contract, including but not limited to, management of its personnel, all components of the Contractor, and all subcontractors at all tiers. The Contractor shall perform in accordance with the terms and conditions herein provided and in accordance with such direction and instruction, which DOE through the Savannah River Operations Office (SR) may provide the Contractor in writing. The Contractor shall implement Departmental requirements including environmental, safety, and health requirements. In the absence of direction and instruction from DOE, the Contractor shall use its

expertise and best commercial practices and industry standards in all matters pertaining to the performance of this contract.

b. The Contractor shall put in place a management team and organizational structure which will enable SRS to reach a position of nationally and internationally recognized applied scientific and engineering excellence. The achievement of enhanced excellence is considered to be the degree to which the capabilities of industry and academia are integrated into the work conducted at SRS using competition as an important driver. The Contractor is expected to benefit from its corporate assets and view the SRS as a national strategic asset to be used in rapidly and effectively applying the results of government and industry sponsored research and development to national problems through privatization and technology transfer.

c. The Contractor shall bring a highly innovative, entrepreneurial and efficient total quality management program to this effort. It shall challenge the status-quo and existing paradigms in formulating and implementing safe, high quality, timely and cost-effective programs and operations at SRS. The Contractor shall use subcontracting (fixed price is preferred when appropriate) and other innovative methods of accomplishing this scope of work. Decisions regarding subcontracting and commercialization initiatives shall be supported through the development of a make-or-buy program emphasizing efficient performance on a least cost basis. The Contractor shall accomplish all work in a manner that minimizes waste and fully complies with all compliance agreements, pollution abatement programs and permit requirements. In accordance with Executive Order 12873 and the DOE Affirmative Procurement Program for Products Containing Recovered Material, the Contractor shall develop and implement a program to make all reasonable efforts to reduce waste and recycle to the maximum extent possible with cost efficiency. In compliance with the federal initiative to "Streamline Procurement Through Electronic Commerce," the Contractor shall to the extent possible, and

within available funding, develop an electronic commerce system that will result in a paperless, automated, and integrated procurement/payment system. Best of class industry baselines should be used to determine and justify staffing requirements as well as cost estimates for maintenance and construction.

d. Safety and environmental awareness must be integrated as core values into all activities. Work must be accomplished in a manner which protects the environment and the safety and health of workers and the public and is in compliance with applicable regulatory and other requirements. The Contractor is expected to identify hazards, manage risks, and identify and implement good management practices site wide and make continued improvements in environment, safety and health (ES&H) performance. The Contractor shall implement recommendations from other organizations (such as the Defense Nuclear Facilities Safety Board and state and federal regulatory agencies) which are accepted by DOE and directed by the Contracting Officer.

## **C.2 ANNUAL OPERATIONAL PLAN**

In addition the general requirements of this Statement of Work, work to be accomplished under this contract is defined for each Fiscal Year in an Annual Operational Plan (AOP). The specific work to be executed under this contract shall be planned, authorized, and controlled using the process and procedures set forth in the DOE SRS Management Plan. This document describes the AOP process under which work, costs/resources, milestones, and other performance measures and criteria are established and controlled. The AOP incorporates and integrates all other work control systems such as Environmental Management Activity Data Sheets and capital project baseline control systems. The SRS Strategic Plan, the SRS Management Plan, the AOP, and all future modifications thereto to these documents, are hereby incorporated into this contract

**f. Site Support**

**(1) Environment, Safety, and Health (ES&H) Support and Assurance Services**

The Contractor shall include provisions for the protection of human health and safety and the environment in all activities for which it has contractual responsibilities. The Contractor shall implement and continuously improve the existing ES&H management plan and shall conduct its activities in full compliance with DOE ES&H requirements. The Contractor shall include, as a minimum, the following disciplines as part of the ES&H support and assurance services:

- Occupational, industrial and construction safety;
- Industrial hygiene;
- Occupational medicine;
- Fire protection;
- Nuclear safety (including criticality safety);
- Transportation safety;
- Radiation protection;
- Emergency operations (fire, rescue, emergency medical, hazardous material response) and Emergency preparedness (including coordination with outside agencies);
- Hazardous material management;
- Environmental management and protection (including National Environmental Policy Act, Resource Conservation Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, and Clean Water Act compliance);
- Pollution prevention and waste minimization;
- Lessons learned/root cause analysis management;
- Technical training;
- Operations control (conduct of operations); and
- Radiological assistance to support emergency response in the Southeast.

The Contractor shall implement an ES&H program that not only covers the Contractor's organizations but also other organizations performing work for the Contractor via subcontracts and other agreements at SRS. The Contractor shall work with other Site organizations to ensure consistent ES&H programs are implemented at SRS to realize efficiencies and cost savings for the overall Site. The Contractor shall provide support for any activity on site, as needed, in emergency situations. The Contractor shall also provide ES&H support to others when directed by DOE; this may include activities such as onsite and offsite environmental analysis and assisting in the preparation of required regulatory information.

The Contractor shall implement and maintain a set of requirements to ensure the protection of human health and safety and the environment. In the event, the Contractor becomes out of compliance, appropriate action to protect human health and safety and the environment shall be taken until compliance is reestablished. When activities are not in compliance with appropriate requirements, the Contractor shall accept violation notices.

The Contractor shall work effectively with other site contractors, subcontractors, external regulators, and others (such as the Defense Nuclear Facilities Safety Board, South Carolina Department of Health and Environmental Control, etc.) to maintain and improve ES&H performance at SRS. The Contractor must ensure ES&H excellence in subcontractor performance and flowdown of all applicable requirements to subcontractors. The Contractor shall consider ES&H performance as an evaluation factor in the selection of subcontractors performing work in Government-owned or leased facilities.

The Contractor shall periodically evaluate the ES&H program for effectiveness by using both self and independent assessments, monitor ES&H performance continuously by the use of ES&H performance indicators, and affect continued ES&H improvement in a cost effective manner.

(2) Engineering and Construction

The Contractor shall be the design and construction manager for the SRS. A minimal in-house capability may be maintained to provide limited design and construction services associated with maintenance and repair. The Contractor shall utilize fixed price contracting for design and construction services to the maximum extent practicable. DOE reserves the right to assign management

**Part I - The Schedule**

**Section H SPECIAL CONTRACT REQUIREMENTS**

**H.1 ACCOUNTING FOR PERFORMING ENTITY**

All financial data and planning of the entities identified in the Special Contract clause entitled, Recognition of Performing Entity shall be provided for at the same level of detail required of the prime Contractor. All actual financial data shall be included with the prime Contractor's input to the Financial Information System by the dates established by DOE. Actual manpower data will also be reported in a form and manner acceptable to DOE.

**H.2 ADVANCE UNDERSTANDING ON HUMAN RESOURCES**

**(a) Advance Understanding on Human Resources**

DOE Order 350.1, "Human Resources Management Program," shall serve as the governing document for the advance understanding. The advance understanding appended to this Contract as Section J, Appendix A, shall as a minimum implement the requirements of this Order.

It is the Department's intent to ensure that the Contractor Human Resource Policies adequately support the Contractor's ability to attract and retain critically skilled employees. Moreover, it is the Contractor's responsibility to notify DOE when any obstacles are encountered that could impact the recruitment and retention of critically skilled employees.

**(b) Labor Relations**

The Contractor shall maintain positive labor-management relations. The Contractor shall respect the right of employees to self-organize, to form, join or assist the labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also to have the right to refrain from any or all of such activities. The Contractor shall be obligated to recognize the current bargaining agents and their existing collective bargaining agreements.

### **H.3 AGREEMENT REGARDING PROPOSED CLAUSES**

This contract modification includes clauses which have not been finalized through the formal rule making process. The Department of Energy anticipates promulgation of formal clauses, or revisions to the clauses, contained in this contract modification prior to, or shortly after, the effective date of this modification. Subsequent to such promulgation, the Contractor agrees to negotiate, in good faith, the substitution of these revised clauses for the corresponding existing contract Clauses. Absent material changes to the above clauses in the Final Rule(s) promulgating the clauses which would substantially increase the contractor's financial or corporate risk, the Contractor agrees to accept the final Departmental versions of these clauses.

- (a). Section I clauses identified with a publication date of "(Month and Year TBE)" are clauses contained in the March 13, 2000 Federal Register Proposed Rule.
- (b) Section I clauses identified with a publication date of '(XXX 2000)" are intellectual property clauses which are being prepared by the Department for release to the public as either a Proposed Rule or an Interim Final Rule.

### **H.4 APPLICATION OF SERVICE CONTRACT ACT TO THE PERFORMING ENTITY**

The Service Contract Act of 1965 (P. L. 89-286) is not applicable to contracts for the operation of DOE facilities. It is however, fully applicable to subcontracts awarded by

contractors operating DOE facilities.

## **H.5 APPROVAL OF EXPENDITURES**

Whenever approval or other action by the Contracting Officer is required with respect to any expenditure or commitment by the Contractor under the terms of this Contract, the Government shall not be responsible for such expenditures or commitments unless and until such approval or action is obtained or taken.

## **H.6 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS**

On October 1, 1996, the Contractor assumed responsibility for existing contracts and other agreements from Contract No. DE-AC09-89SR18035. These included: (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permits, (e) collective bargaining agreements, (f) site-wide plans (e.g., safety and security plans) and (g) any other agreements in effect prior to execution of this Contract.

## **H.7 CONFIDENTIALITY OF INFORMATION**

(a) To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to

## **H.9 CONTRACTOR EMPLOYEES/NON-CONTRACT ACTIVITIES**

(a) In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all professional, technical, skilled, and unskilled personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the DOE or the Government; however, nothing herein shall require the establishment of any

employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

(b) The Contractor's employees engaged in the performance of this Contract may remain on the payroll at the Savannah River Site and be used to perform incidental work by the Contractor unrelated to the scope of work of this Contract, provided that: these activities do not interfere with work under this Contract; no costs, expense or liabilities, resulting from the performance of such activities shall be allowable costs under the Contract; and the Contractor shall indemnify and hold harmless DOE against any such liabilities, claims or expenses resulting from such activities. Further, the Contractor shall make advance payment for such activities to the Special Financial Institution Account Agreement For Use With The Payments Cleared Financing Agreement referred to in Appendix B hereof, in manner and amount consistent with applicable DOE financial policies and procedures, as amended, and as determined by the Contracting Officer. Payments so made shall become part of the advances of Government funds as described in the clause entitled "Payments and Advances." The Contractor shall submit to the Contracting Officer a monthly written report on all employees who have been assigned to other than contract work. If the Contracting Officer determines that excessive use of personnel for such purposes has impacted overall contract performance, in addition to other actions or remedies available under the contract, the Contracting Officer may require the Contractor to obtain advance written approval for any such future use of any of the Key Personnel identified in Section J, Appendix D.

(c) The parties recognize that the performance of activities described in paragraph (b) above may result in the generation of records. The parties agree that any records (excluding, records required to determine costs, expenses, or liabilities related to the activities in (b) above), being paid for

out of corporate and not Contract funds are owned by the Contractor and DOE shall have no right to inspect, copy, or audit such records as set forth in the Contract Clause entitled, "Access To And Ownership Of Records."

(j) In regards to Clause H.11 Contract Employees/Non-Contract Activities, it is understood and agreed that the Contractor will continue to maintain in suspense and not collect a portion of its earned fee to which it is otherwise entitled, to satisfy the "advance payment" requirements of this clause.

(k) DOE will support a special incentive compensation plan as an allowable cost subject to satisfying the requirements of DOE Order 350.1. The parties contemplate the allowable cost of the program to approximate \$1 million to \$1.5 million, but the program shall not exceed \$1.5 million per year in allowable costs.

(l) It is the understanding of the parties that the basis for the Environmental Management Program Performance Based Incentives (EM-PBI's) and associated required support functions for the work under this contract is predicated upon a total funding of approximately \$6.6 billion commencing at the start of FY2001 and continuing through the end of FY2006. This funding amount specifically excludes costs for facility safeguards and security, and Salt Disposition Activities in FY2002 - FY2006.

The parties recognize that full achievement of the EM-PBIs incorporated into the contract on the date of execution of this modification, as well as all basic support and program functions as described in the FY 2001 Annual Operational Plan (subject to future change control), are estimated to cost significantly more than \$6.6 billion, and achievement of the EM-PBIs is predicated upon WSRC utilizing its demonstrated past experiences and business acumen to continue to generate cost effective methods and means to complete the work.

It is further understood that funding for Defense Program activities and Materials Disposition activities (including the HEU Blenndown project) will be separately provided for the

National Nuclear Security Administration (NNSA) with related PBIs applicable to specific NNSA areas of interest.

(m) For purposes of the contract clause in Section I entitled, Conditional Payment of Fee, the evaluation periods contemplated shall be six month periods commencing on October 1, 2000. Pending incorporation of the clause discussed below into the contract, the amount of fee subject to reduction under the Conditional Payment of Fee clause shall be the total fee earned plus provisional fee payments made during the six month evaluation period.

(n) As a condition of award of this contract, the contractor has agreed to accept without negotiation, a clause the Department is developing entitled Conditional Payment of Fee, Profit and Other Incentives - Facility Management Contracts (or some similar title). The clause will address, among other issues, fee reductions for various degrees of performance failures relating to environment, safety and health issues as well as safeguarding restricted data and other classified information. The contractor agrees to accept the new clause once promulgated as a Final Rule in the Federal Register and incorporated into the Department of Energy Acquisition Regulation. Under the terms of the new clause, evaluation periods will remain as six month periods.

## **H.12 CORPORATE HOME OFFICE EXPENSES**

(a) For Contractor affiliated sources, the Contractor may obtain direct support from its affiliates and those of the performing entity to meet technical and staffing requirements on an as-needed basis as approved by the Contracting Officer. Contracting Officer approval shall be obtained with DOE's approval of the Contractor's fiscal year Annual Operating Plan (AOP) which will show the anticipated level of affiliate support and document the anticipated level of expertise required from the affiliate. Prior to ordering any support from an affiliate, the Contractor shall either document the "special expertise" required from the affiliate or document support from the affiliate is being

obtained on a "least cost basis" than from other available sources. Any support required beyond the level of support approved in the AOP shall be processed via formal change control procedures. The process and procedure for utilizing support from affiliates shall be approved by the Contracting Officer.

(b) Services from an approved Contractor affiliate will be at cost without additional fee or profit. Allowable cost will include direct costs and all allowable affiliate indirect cost in accordance with applicable DCAA cost principles and cost accounting standards. Temporary assignments of Contractor affiliate personnel to the Savannah River Site or other sites identified in this contract shall bear indirect costs based upon DCAA recommended/approved offsite rate(s) that exclude home office facilities related costs. However, in the event a DCAA recommended/approved offsite rate(s) does not exist for a specific Contractor affiliate, the Contractor affiliate shall not be required to develop an offsite rate unless the temporary assignment exceeds 6 months.

(c) Contractor's affiliates providing such services and personnel shall perform the work in accordance with applicable terms and conditions of this contract.

#### **H.13 DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect Contract work. Based on the Contracting Officer's direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that

subcontractors adhere to these requirements.

#### **H.14 DISCRIMINATION IN EMPLOYMENT**

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations thereunder. Additionally, the Contractor shall comply with all other laws such as, but not limited to, Title VII, 42 U.S.C. Section 2000e, et.seq.

#### **H.15 ENVIRONMENT, SAFETY, AND HEALTH**

The Contract Clause entitled "Integration of Environment, Safety and Health Into Work Planning and Execution" requires the Contractor to develop and implement a Safety Management System. As part of this requirement, the Contractor shall submit to the Contracting Officer, or designee, a document entitled Integrated Safety Management System Description Document that addresses how the Contractor will meet the requirements of this clause. The Contractor will notify the Contracting Officer, or designee, in writing, of any written direction or instruction which contradicts, limits, or compromises those environment, safety, and health requirements. Having already submitted a Description Document for FY2001, the Contractor shall submit an update to the Integrated Safety Management System Description Document each year on September 1 for the following fiscal year. Any changes to the Integrated Safety Management System Description Document after the Contracting Officer's, or designee's, initial approval shall be approved by the Contracting Officer, or designee.

This Contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract, except with respect to facilities/activities for which separate Authorization Agreement(s) are necessary. Authorization Agreements are to be used to establish, document, and control the safety

requirements and other parameters forCategory 2 nuclear facilities and other facilities as directed by the Contracting Officer to ensure adequate protection of the workers, the public, and the environment. Updates and changes to any approved Authorization Agreements(s) shall be subject to Contracting Officer approval.

#### **1.24. FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

#### **1.25. FAR 52.222-26 EQUAL OPPORTUNITY (FEB 1999)**

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of

\$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,

- (i) employment;
- (ii) upgrading;
- (iii) demotion;
- (iv) transfer;
- (v) recruitment or recruitment advertising;
- (vi) layoff or termination;
- (vii) rates of pay or other forms of compensation; and
- (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explains this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color,

religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled.

terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

## **1.26. FAR 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

(a) *Definitions.* As used in this clause --

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who —

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and as discharged or released therefrom with other than a dishonorable discharge; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) *General.*

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Employment;
- (ii) Upgrading;

- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation;

and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) *Listing Openings.*

(1) The Contractor agrees to list all employment openings existing at Contract award or occurring during Contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive Orders regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound

to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract clause.

(d) *Applicability.*

This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) *Postings.*

(1) The Contractor agrees to post employment notices stating—

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other Contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(0) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken

under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

#### **1.27. FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

##### **(a) General.**

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as~

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue

training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(c) *Postings*

(1) The Contractor agrees to post employment notices stating— (i) The Contractor's obligation under the law to take affirmative action" To employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U. S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the

Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

#### **1.28. FAR 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)**

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and by the cognizant contracting officer accompanies the order. In appropriate instances, such as geographical proximity, contractors may obtain discount air fares through a DOE office or a cooperating local travel agency when either a SATO or FTMC is available. Some airlines allow the purchase of discounted airfares with cash or credit card.

(2) In the case of hotel and motel accommodations, reservations may be made by the contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.

(3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.

(e) Standard letter of identification. Contractors shall prepare for the authorizing contracting officer a letter of identification based on the following format:

**FORMAT FOR GOVERNMENT CONTRACTORS TO**

**QUALIFY FOR TRAVEL DISCOUNTS (TO BE TYPED ON AGENCY OFFICIAL LETTERHEAD)**

**To: (Source of ticketing, accommodations or rental)**

**Subject: Official Travel of Government Contractor**

(Full name of traveler), bearer of this letter, is an employee of (company name) which is under contract to this agency under the Government contract (contract number). During the period of the contract (give dates), the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.

(Signature, title and telephone number of the Contracting Officer).

**1.81. RESERVED**

**1.82. RESERVED**

**1.83. DEAR 970.5203-1 MANAGEMENT CONTROLS (MONTH AND YEAR TBE)**

(a) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate,

reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

(b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

#### **1.84. DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MONTH AND YEAR TBE)**

(a) The contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

(b) The contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.

(c) The contractor may consult with the contracting officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.

(d) The contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

#### **1.85. DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (MONTH AND YEAR TBE)**

(a) Organization chart. As promptly as possible after the execution of this contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.

(b) Supervisory representative of contractor. Unless

otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.

(c) Control of employees. The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be contrary to the public interest, the Government reserves the right to require the contractor to remove the employee.

(d) Standards and procedures. The contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

#### **COUNTERINTELLIGENCE (MONTH AND YEAR TRE) DEVIATION**

(a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The Contractor shall comply with requirements established by the SR Counterintelligence Officer. The SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Contractor employees traveling to foreign

countries or interacting with foreign nationals. The Contractor shall be responsible for requesting defensive Counterintelligence briefings and debriefings of Contractor employees who have traveled to foreign countries or interacted with foreign nationals. The contractor shall coordinate Counterintelligence Awareness training activities with the SR Counterintelligence Officer. The Contractor shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the SR Counterintelligence Officer; and provide assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

**1.87. DEAR 970.5204-2 LAWS, REGULATIONS, AND  
DOE DIRECTIVES (MONTH AND YEAR TBE)**

(a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B

and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "'Changes."

(d) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "'Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the

regulation.

(d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

**PART M - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS SECTION J - LIST OF ATTACHMENTS**

**APPENDIX A -PERSONNEL APPENDIX**

This advance understanding sets forth policies and associated expenses related to Contractor employee practices, relocation expenses, and other costs which have been agreed to by the parties as being reasonable and reimbursable when incurred in the performance of the contract work. Only those items of costs that are set forth herein or specifically referenced in this advance understanding are allowable by reason of advance understanding under this Contract. The failure to include any cost herein shall raise no presumption or inference as to the allowability or non-allowability of such cost.

DOE Order 350.1, "Human Resources Management Program," shall serve as the governing document for this-advance understanding.

The contract terms prior to this modification required the Contractor to obtain DOE approval of certain changes/transactions affecting its Contractor's Procedures Manual 5B (paragraph A below) and its Other Benefit Plans (paragraph G below). Costs associated with any change not approved by DOE as required by the previous contract terms are not covered by this Advance Agreement and there shall be

no presumption or inference as to the allowability or non-allowability of any cost associated with any such unapproved change.

**A. Contractor Employee Practices**

The Contractor shall implement local policies to ensure cost effective administration of its personnel programs in accordance with the terms of this contract. After the effective date of this modification any major program design change to the Contractor's Procedures Manual 5B, dated 05/06/96, as modified, requires Contracting Officer's approval prior to implementation. In case of conflict between the provisions of this Appendix and the Personnel Manual 5B, this Appendix shall take precedence.

**B. Contractor Employee Compensation**

The Contractor shall implement its employee compensation program in accordance with its policies and practices as approved by the Contracting Officer. The following specifics shall apply:

**1. Compensation Program**

**3. Individual Compensation Actions**

Contracting Officer approval is required prior to reimbursement for initial and proposed changes to base salary for the top official, the deputy top official and only those direct reports to the top official as designated by the Contracting Officer (i.e., the key personnel identified in Appendix D). The Contractor shall provide supporting justification related to internal and external equity as well as individual performance. For each initial compensation or change, the Contractor shall submit the Compensation Approval form, DOE F 3220.5 sufficiently in advance of the proposed effective date of the action. No DOE funds shall be used for an action prior to Contracting Officer approval.

Also, the Contractor shall provide to DOE the semi-annual total earnings report which includes;

(a) subtotal dollar amounts of base salary and other pay

separately for exempt and nonexempt employees, indicating number of exempt employees and number of nonexempt employees, and

(b) individual compensation by employee name, position and amount (base salary and other pay separately) for each direct report to the top official and individual compensation at \$100,000 and above.

4. Incentive Compensation - The parties agree that no incentive compensation shall be charged to the contract pending agreement on an incentive compensation program which satisfies the requirements of DOE Order 350.1.

5. Exempt Overtime Eligibility - The following Provisions apply to exempt overtime eligibility:

a. All employees in grade 36 and above will be excluded from any overtime benefits.

b. Casual overtime worked by exempt employees will not be compensable.

c. Eligible employees:

(1). All employees working in the capacity of first line supervisor.

(2) All employees performing shift work

(3) All employees approved for extended work schedules.

(4) Rate of overtime pay:

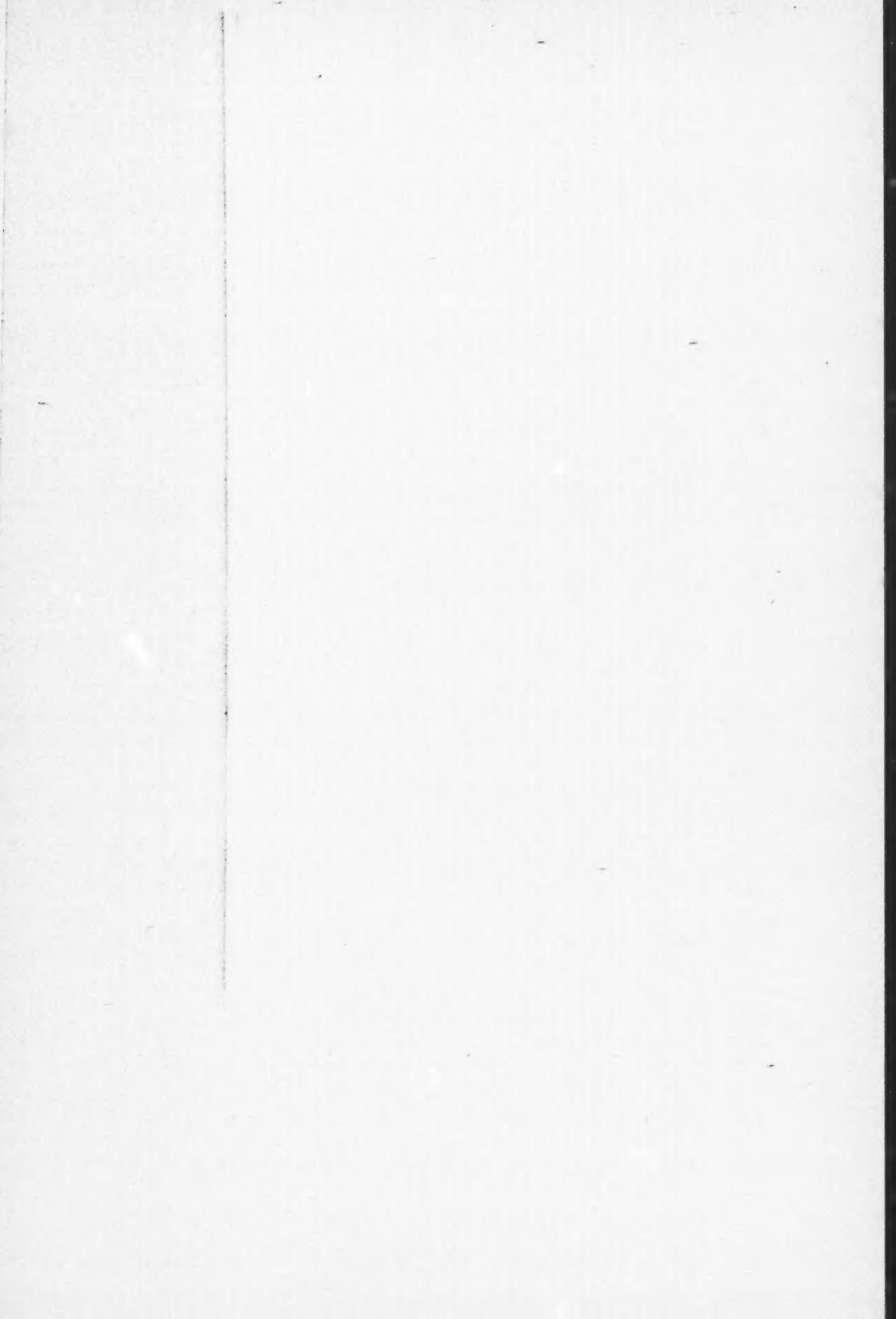
### **PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS SECTION J - LIST OF ATTACHMENTS**

#### **APPENDIX E**

#### **DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES, LIST B LIST OF APPLICABLE DIRECTIVES**

Pursuant to the LAWS, REGULATIONS, AND DOE DIRECTIVES clause, the contractor shall adhere to the ES&H requirements compliance process delineated in the Site

Standards/Requirements Identification Document (S/RDD). For requirements other than ES&H, the contractor shall, in accordance with the existing SR Directives Management System, adhere to the existing DOE directive requirements that are the basis for established procedures and programs until authorized approvals are obtained to deviate from established requirements. Revised or new requirements shall be forwarded to the contractor by the Contracting Officer or designee via Contract Administrator Notice (CAN) as provided for in DII 251.1.1 A Directives and Compliance System (or superseding versions). DII 251.1.1 A and the S/RID, and superseding versions thereof, are hereby incorporated by reference.



Westinghouse Savannah River Company  
Constructive Discipline Assessment and Development

Routing	Initial	Date
HR Representative	XH	10/30/00
Personnel Coordinator	LSB	10/30/00
Policy and Practices, 719-A	LSA	10/30/00
Benefits and Records, 730-1B		

## Instructions

Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.  
 Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 50, Procedures 2.1, and 2.7.  
 Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right hand corner of this form for routing. Note: The original form must be routed.

## Section 1 -- Employee Information

Name Lawrence Christopher	Social Security No 252-27-7614	<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> Nonexempt	Job Title Separation Operator
Home Department NMSS / SEP.	Home Org Code RH1514	Loaned/Seconded Dept Org Code N/A	ASB 11/07/1987
PSD 11/07/1998			

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date 10/21/2000	Reason For Discipline Individual placed on Probation
------------------------------	---

## Indicate Type of Constructive Discipline or Followup

<input type="checkbox"/> Corrective	<input type="checkbox"/> Probation	<input checked="" type="checkbox"/> Probation Followup
<input type="checkbox"/> Corrective (Remainder of Shift Without Pay)	<input type="checkbox"/> Probation (Remainder of Shift Without Pay)	<input type="checkbox"/> Final Employee Commitment (FEC) (80 Hrs Without Pay)
<input type="checkbox"/> Corrective (24 Hrs Without Pay)	<input type="checkbox"/> Probation (24 Hrs Without Pay)	<input type="checkbox"/> FEC Followup
<input type="checkbox"/> Corrective (40 Hrs Without Pay)	<input type="checkbox"/> Probation (40 Hrs Without Pay)	<input type="checkbox"/> Termination

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

This has maintained a positive attitude since he was placed on probation. He has been reporting early for work and hasn't missed any time as of this date. Instead of sitting around and using his disability to get out of work he has took it upon himself to learn more about the process by helping out in the Control Room. He is currently still on limited duty and cannot actively train in the Facility as of now, but he informed me that he is to see his Doctor on Monday 10/23/00, and may be allowed to return to wearing a shoe. He volunteered to give the O&I safety meeting to the Shift 11 personnel.

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Start actively training in the Sample Aisle as soon as medical will allow
2. Continue to report on time for work as scheduled
3. Continue to have a positive attitude

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. PLEASE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print) <i>Christopher Lawrence</i>	Signature <i>Christopher Lawrence</i>	Date 10/21/00
Manager/supervisor Supervisor Name (Print) <i>Thigpen, Willard R.</i>	Signature <i>Willard R. Thigpen</i>	Date 10/21/00
Next Higher Level Manager (Level II/FEC) (Print) <i>Steve Williams</i>	Signature <i>Steve Williams</i>	Date 10/21/00



## Westinghouse Savannah River Company

## Constructive Discipline Assessment and Development

Routing	Initial	Date
HR Representative	<i>ED</i>	11/29/00
Personnel Coordinator	<i>SE</i>	12/4/00
Policy and Practices, 719-A	<i>ED</i>	11/24/00
Benefits and Records, 730-1B		

## Instructions

Section 1 If employee is on loan or seconded manager/supervisor should consult with home department.

Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 5B, Procedures 2.1, and 2.7.

Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 — Employee Information

Name CHRISTOPHER, LAWRENCE	Social Security No 252-27-7614	Exempt <input checked="" type="checkbox"/> Nonexempt	Job Title SEPERATIONS OPERATOR
Home Department NMSS /SEP	Home Org Code SH1514	Loaned/Seconded Dept Org Code NA	End Date 11/6/1987

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Disciplinary Action (Review with HR Manager/Representative)

Effective Date 11/24/00	Reason For Discipline FOLLOW UP ON PROBATION
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## Indicate Type of Constructive Discipline or Followup

<input type="checkbox"/> Corrective	Probation	<input type="checkbox"/> Probation Followup
<input type="checkbox"/> Corrective (Remainder of Shift Without Pay)	Probation (Remainder of Shift Without Pay)	<input type="checkbox"/> Final Employee Commitment (FEC) (60 Hrs Without Pay)
<input type="checkbox"/> Corrective (24 Hrs Without Pay)	Probation (24 Hrs Without Pay)	<input type="checkbox"/> FEC Followup
<input type="checkbox"/> Corrective (40 Hrs Without Pay)	Probation (40 Hrs Without Pay)	<input type="checkbox"/> Termination

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris has been on time for his normal scheduled work during this review period except for the one day he was excused by the the Deputy Facility manager S. Williams on 11/9/2000. He is making progress on obtaining his sample aisle qualification which will be the first of three he will be required to have to maintain his 18 paygrade. Chris has maintained a positive attitude and shows a lot of initiative in completing all task that are assigned to him.

## Section 4 — Recommended Development Actions and Specific Mutualy Agreed Upon Goals (Additional Space Available on Back)

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print) <i>Christopher Lawrence</i>	Supervisor <i>Christopher Lawrence</i>	Date 11/24/00
Manager/First Line Supervisor Name (Print) <i>Willard R. Triggen Jr</i>	Signature <i>Willard R. Triggen Jr</i>	Date 11/24/00
Next Higher Level Manager (Level II & FEC) (Print) <i>Steve Williams</i>	Signature <i>Steve Williams</i>	Date 11/28/00

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Westinghouse Savannah River Company  
Constructive Discipline Assessment and Development

Housing	Date
HR Representative	1/2/01
Personnel Coordinator	1/1/01
Policy and Practices, 719-A	1/2/01
Benefits and Records, 730-18	1/2/01

## Instructions

Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.

Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 5B, Procedures 2.1, and 2.7.

Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

Section 1 — Employee Information					
Name	Social Security No.	<input checked="" type="checkbox"/> Exempt	Job Title		
Lawrence, Christopher	252-27-7614	<input type="checkbox"/> Nonexempt	Separation Operator		
Home Department	Home Org Code	Loaned/Seconded Dept Org Code		ASD	PSO
NMSS/SEP.	SH1514	NA		11/6/1987	11/6/1987

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)		
Effective Date	Reason For Discipline	
12/23/2000	Individual placed on probation	
Indicate Type of Constructive Discipline or Followup		
<input type="checkbox"/> Corrective	<input type="checkbox"/> Probation	<input checked="" type="checkbox"/> Probation Followup
<input type="checkbox"/> Corrective (Remainder of Shift Without Pay)	<input type="checkbox"/> Probation (Remainder of Shift Without Pay)	<input type="checkbox"/> Final Employee Commitment (FEC) (80 Hrs Without Pay)
<input type="checkbox"/> Corrective (24 Hrs Without Pay)	<input type="checkbox"/> Probation (24 Hrs Without Pay)	<input type="checkbox"/> FEC Followup
<input type="checkbox"/> Corrective (40 Hrs Without Pay)	<input type="checkbox"/> Probation (40 Hrs Without Pay)	<input type="checkbox"/> Termination

Section 3—Summary Assessment Between Employee and Line Management (Additional Space Available on Back)  
Chris completed his sample aisle training and passed the JPM. He is currently training on second level. He missed 4 days during this month due to an illness which he had a Doctors excuse for and he reported in with medical when he returned.

Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)	
<ol style="list-style-type: none"> <li>1. Continue to progress towards obtaining all qualifications needed to be fully qualified as a building operator.</li> <li>2. Continue to report for all scheduled work.</li> <li>3. Continue to have a positive attitude.</li> </ol>	

Section 5 — Employee Comments (Optional) (Additional Space Available on Back)	
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Section 6 — Signatures	
<p>This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE Signature does not necessarily signify agreement with the assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.</p>	
Employee's Name (Print) <i>Christopher Lawrence</i> Manager/First Line Supervisor Name (Print) <i>William R. Thigpen</i> Next Higher Level Manager (Level II FEC) (Print) <i>Steve W. U. M. M.</i>	Signature <i>Christopher Lawrence</i> Signature <i>William R. Thigpen</i> Signature <i>Steve W. U. M. M.</i>
	Date <i>12/27/00</i> Date <i>12/27/00</i> Date <i>12/27/00</i>

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## Westinghouse Savannah River Company

## Constructive Discipline Assessment and Development

Routing	Initial	Date
HR Representative	HC	3/6/01
Personnel Coordinator	HC/B	3/8/01
Policy and Practices, 719-A	LC	3/9/01
Benefits and Records, 730-1B		

## Instructions

Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.  
 Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 5B, Procedures 2.1, and 2.7.  
 Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 — Employee Information

Name	Social Security No	Exempt	Job Title
Lawrence, Christopher	252-27-7614	<input checked="" type="checkbox"/> Nonexempt	building operator
Home Department	Home Org Code	Loaned/Seconded Dept Org Code	ASD PSD
NMSS /SEP	SH1514	N/A	11/6/1987 11/6/1987

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date	Reason For Discipline
2/28/2001	Individual placed on Probation

## Indicate Type of Constructive Discipline or Followup

<input type="checkbox"/> Corrective	<input type="checkbox"/> Probation	<input checked="" type="checkbox"/> Probation Followup
<input type="checkbox"/> Corrective (Remainder of Shift Without Pay)	<input type="checkbox"/> Probation (Remainder of Shift Without Pay)	<input type="checkbox"/> Final Employee Commitment (FEC) (60 Hrs Without Pay)
<input type="checkbox"/> Corrective (24 Hrs Without Pay)	<input type="checkbox"/> Probation (24 Hrs Without Pay)	<input type="checkbox"/> FEC Followup
<input type="checkbox"/> Corrective (40 Hrs Without Pay)	<input type="checkbox"/> Probation (40 Hrs Without Pay)	<input type="checkbox"/> Termination

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris has made progress has been satisfactory in completing his OJT for the Building operator qual. during Jan. and Feb. 2001. I have talked with Chris on numerous occasions since the 1st of the year about managing his SV. time wisely. You have used 118.5 hrs. so far this year. You have 81.5 hrs left. Also one of the reasons you were placed on probation for was not keeping your supervision informed on your medical condition. On 2/2/01 at 1915 hrs. I sent you to medical because your back was hurting. Medical released you at 1955 hrs. to report to the emer. room to have a doctor check you out. You did report to the emer. room but only stayed for 40 min. and didn't see a doctor. I called your house and found you at home at 2355 hrs.

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

- Chris you must keep supervision aware of your medical condition and whereabouts at all times. failure to do so could result in you being placed on FEC.
- You need to manage your SV. time more efficiently than you have so far to keep from having time off without pay
- you need to continue to progress on your OJT to obtain the necessary quals. for an grade 18 operator

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

I FULLY UNDERSTAND THE IMPORTANCE OF Advising SUPERVISION OF MY MEDICAL STATUS. However, PREVIOUSLY Removal From MEDICAL at 1915, THEY INFORM MY SUPERVISION OF THE STATUS. Moreover, I DID INFORM MY FLS A ~~1915~~ 1915 AM AT THE STATUS FROM HOSPITAL DOCTOR.   
 01/31/01

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE Signature does not necessarily signify agreement with the assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print)	Signature	Date
Christopher Lawrence	<i>Christopher Lawrence</i>	3-1-01
Manager/First Line Supervisor Name (Print)	Signature	Date
Willard R. Thigpen	<i>Willard R. Thigpen</i>	3/16/01
Next Higher Level Manager (Level II if FEC) (Print)	Signature	Date



Westinghouse Savannah River Company  
Constructive Discipline Assessment and Development Continued

Instructions

Indicate the appropriate section heading, such as Summary, Recommended Development Actions, or Employee Comments.

Employee Information

Name	Social Security No.	Manager/Supervisor Name	Date
Lawrence, Christopher	252-27-7614	Willard R. Thigpen	2/28/2001

Additional Information

on 2/20/01. When I asked you what you were doing at home and if you had seen a doctor your reply was no that your back was hurting to bad to wait appx. 4 hrs. to be seen. I fully understand your back was hurting and would have probably told you to go home and see a doctor in the morning but you never called when you left H-AREA medical or the emer. room. you did report back to the emer. room after I instructed you to at 00:20 hrs. On 2/21/01 and they released you for three days bed rest. you failed to keep myself or T. Wood advised of your whereabouts or condition which you must do.

Signatures

Employee's Name (Print)	Signature	Date
Christopher Lawrence	Christopher Lawrence	3/10/01
Supervisor's Name (Print)	Signature	Date
Willard R. Thigpen	Willard R. Thigpen	3/10/01
Next Higher Level Manager (Level II II FEC) (Print)	Signature	Date



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## Constructive Discipline Assessment and Development

Routing	Date
HR Representative	1/1/01
Personnel Coordinator	1/2/01
Policy and Practices, 719-A	1/3/01
Benefits and Records, 730-1B	1/3/01

## Instructions

Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.  
 Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual SB, Procedures 2.1, and 2.7.  
 Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 — Employee Information

Name	Social Security No.	<input type="checkbox"/> Exempt	Job Title
Lawrence, Christopher	252-27-7614	<input checked="" type="checkbox"/> Nonexempt	building operator
Home Department	Home Org Code	Loaned/Seconded Dept Org Code	ASD PSD
NMSS /SEP	SH1514	N/A	11/6/1987 11/6/1987

## Purpose

To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date	Reason For Discipline
3/28/2001	Individual placed on Probation

## Indicate Type of Constructive Discipline or Followup

Corrective  Probation  Probation Followup  
 Corrective (Remainder of Shift Without Pay)  Probation (Remainder of Shift Without Pay)  Final Employee Commitment (FEC) (80 Hrs Without Pay)  
 Corrective (24 Hrs Without Pay)  Probation (24 Hrs Without Pay)  FEC Followup  
 Corrective (40 Hrs Without Pay)  Probation (40 Hrs Without Pay)  Termination

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris's progress has been satisfactory in completing his OJT for the Building operator qual. during Mar.2001. He is currently completing his OJT for the 2nd level part of his building qual. and has completed the G.V. portion. He continues to maintain a positive attitude and is managing his time off a little better than he has in the past.

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Chris you must keep supervision aware of your medical condition and whereabouts at all times. failure to do so could result in you being placed on FEC.
2. continue to manage your sv time wisely
3. you need to continue to progress on your OJT to obtain the necessary qual. for an grade 18 operator

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print)

Manager/First Line Supervisor Name (Print)

Ext Higher Level Manager (Level II if FEC) (Print)

Signature

Signature

Signature

Signature

Signature

Date

Date

Date

Date

Date



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## Constructive Discipline Assessment and Development

Routing	Initial	Date
HR Representative	HRB	5-9-01
Personnel Coordinator	HRD	5/10/01
Policy and Practices, 719-A	HRD	5/10/01
Benefits and Records, 730-1B		

## Instructions

Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.

Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual SB, Procedures 2.1, and 2.7.

Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing Note The original form must be routed.

## Section 1 — Employee Information

Name	Social Security No.	<input type="checkbox"/> Exempt	Job Title
Lawrence, Christopher	252-27-7614	<input checked="" type="checkbox"/> Nonexempt	Building Operator
Home Department	Home Org Code	Loaned/Seconded Dept Org Code	ASD
NMSS/SEP	SH-1514	N/A	PSD
11/6/1987	11/6/1987		

Purpose  
To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date	Reason For Discipline
5/4/2001	Individual placed on probation

Indicate Type of Constructive Discipline or Followup

<input type="checkbox"/> Corrective	<input type="checkbox"/> Probation	<input checked="" type="checkbox"/> Probation Followup
<input type="checkbox"/> Corrective (Remainder of Shift Without Pay)	<input type="checkbox"/> Probation (Remainder of Shift Without Pay)	<input type="checkbox"/> Final Employee Commitment (FEC) (80 Hrs Without Pay)
<input type="checkbox"/> Corrective (24 Hrs Without Pay)	<input type="checkbox"/> Probation (24 Hrs Without Pay)	<input type="checkbox"/> FEC Followup
<input type="checkbox"/> Corrective (40 Hrs Without Pay)	<input type="checkbox"/> Probation (40 Hrs Without Pay)	<input type="checkbox"/> Termination

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris is continuing to progress on his 2nd level portion of his building qualification. He must manage his time bank hours to prevent him from having to request time off without pay which must be approved by a level 2 Manager. He currently has 38 hours left in his time bank for 2001 and 8 months remaining in this year. Chris has the potential to become an excellent operator if he could get his priorities in order.

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Manage your time bank hour more effectively to reduce the need of taking time off without pay with the understanding all time off without pay must and will be approved / denied by a level 2 Manager.
2. Continue to progress on obtaining your building qualifications which should be completed by this time next month.

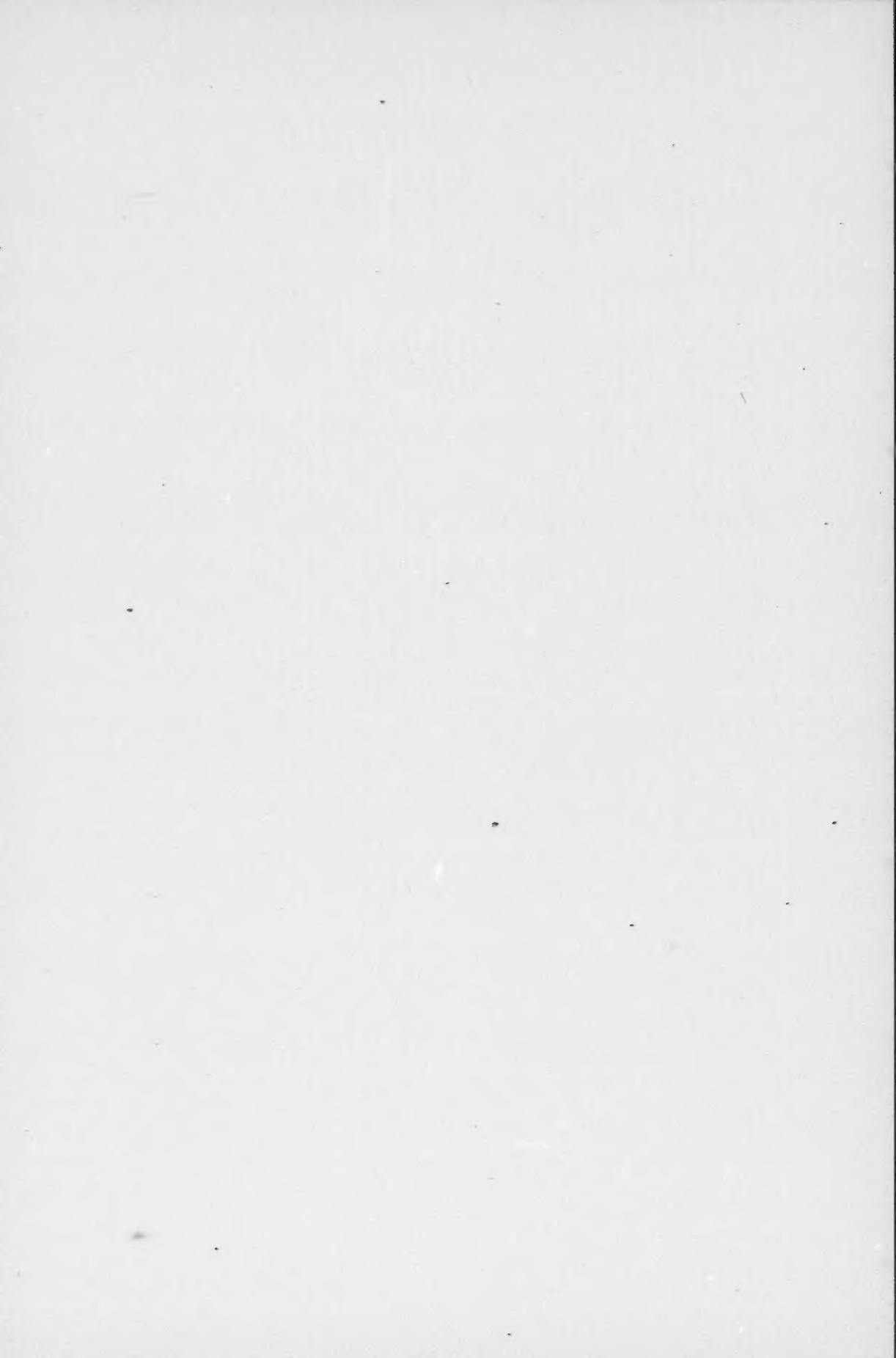
## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

None

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print)	Signature	Date
Christopher Lawrence	Christopher Lawrence	5/5/01
Manager/First Line Supervisor Name (Print)	Signature	Date
Willard R. Triggen	Willard R. Triggen	5/5/01
Next Higher Level Manager (Level II FEC) (Print)	Signature	Date



Westinghouse Savannah River Company

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## Constructive Discipline Assessment and Development

Routing	Initial	Date
HR Representative		
Personnel Coordinator		
Policy and Practice, 719-A		
Benefits and Records, 730-1B		

## Instructions

Section 1 If employee is on loan or seconded, manager/supervisor should consult with home department.  
 Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 5B, Procedures 2.1, and 2.7.  
 Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 — Employee Information

Name	Social Security No.	<input type="checkbox"/> Exempt	Job Title
LAWRENCE, CHRISTOPHER	252-27-7814	<input checked="" type="checkbox"/> Nonexempt	BUILDING OPERATOR

Home Department	Home Org Code	Loaned/Seconded Dept Org Code	ASD	PSD
NMMD/SEP	SH 1514	NA	11/6/1987	11/6/1987

Purpose	To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.
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## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date	Reason For Discipline
6/1/2001	INDIVIDUAL PLACED ON PROBATION

Indicate Type of Constructive Discipline or Followup:	<input type="checkbox"/> Corrective	<input type="checkbox"/> Probation	<input checked="" type="checkbox"/> Probation Followup
	<input type="checkbox"/> Corrective (Remainder of Shift Without Pay)	<input type="checkbox"/> Probation (Remainder of Shift Without Pay)	<input type="checkbox"/> Final Employee Commitment (FEC) (80 Hrs Without Pay)
	<input type="checkbox"/> Corrective (24 Hrs Without Pay)	<input type="checkbox"/> Probation (24 Hrs Without Pay)	<input type="checkbox"/> FEC Followup
	<input type="checkbox"/> Corrective (40 Hrs Without Pay)	<input type="checkbox"/> Probation (40 Hrs Without Pay)	<input type="checkbox"/> Termination

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris is making satisfactory progress on obtaining his building quals and should be fully qualified by this time next month. He experienced a slight problem with a level 2 manager concerning our sample delivery procedure this month. It was determined he was doing the right thing but he needs to learn to be more professional when dealing with management. This last incident resulted due to a problem delivering samples a few months back. Chris also needs to allow himself a little more time to make sure he arrives at work on time instead of pushing the envelope of arriving on time or a few minutes late.

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. You still need to manage your time bank hours to ensure that no time will be taken off without pay and understand a Level 2 manager has to approve any time off without pay.
2. Learn to be more tactful when dealing with management. Get your FLM involved with any problems you have with management.
3. Continue to progress in obtaining your building quals and report for work on time as scheduled.

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

None

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print)	CHRISTOPHER LAWRENCE	Signature	Date
Manager/First Line Supervisor Name (Print)	Willard R. Thigpen	Signature	Date
Next Higher Level Manager (Print) (if FEC)		Signature	Date

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APPENDIX L

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## Constructive Discipline Assessment and Development

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Routing	Initial	Date
HR Representative	2EB	7/14/01
Personnel Coordinator		
Policy and Practices, 719-A		
Benefits and Records, 730-1B		

## Instructions

Section 1 If employee is on Seconded, manager/supervisor should consult with home department.  
 Section 2 Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for discipline is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline — See WSRC Service Manual 5B, Procedures 2.1, and 2.7.  
 Section 3 Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments—See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 — Employee Information

Name	Social Security No.	<input type="checkbox"/> Exempt	Job Title
Lawrence, Christopher	252-27-7614	<input checked="" type="checkbox"/> Nonexempt	Building Operator
Home Department	Home Org Code	Loaned/Seconded Dep't Org Code	ASD
NMDO/SEP	SH 1514	N/A	PSD
11/6/1987 11/6/1987			

Purpose  
 To provide employees and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 — Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date	Reason For Discipline
7/6/2001	Individual placed on Probation

Indicate Type of Constructive Discipline or Followup

<input type="checkbox"/> Corrective	<input type="checkbox"/> Probation	<input checked="" type="checkbox"/> Probation Followup
<input type="checkbox"/> Corrective (Remainder of Shift Without Pay)	<input type="checkbox"/> Probation (Remainder of Shift Without Pay)	<input type="checkbox"/> Final Employee Commitment (FEC) (80 Hrs Without Pay)
<input type="checkbox"/> Corrective (24 Hrs Without Pay)	<input type="checkbox"/> Probation (24 Hrs Without Pay)	<input type="checkbox"/> FEC Followup
<input type="checkbox"/> Corrective (40 Hrs Without Pay)	<input type="checkbox"/> Probation (40 Hrs Without Pay)	<input type="checkbox"/> Termination

## Section 3 — Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris completed his JPM for his Building Qual. during this reporting period and is awaiting training to update his records. Chris experienced an illness this month and it is noted that he complied with the terms of his probation with respect to management notifications, etc. Unfortunately due to his illness, Chris has expended all remaining hours in his 2001 Time bank and some timeout off without pay resulted. As previously communicated, all time off without pay must be approved by a Level 2 Manager (i.e. Facility Manager / Deputy Facility Manager).

## Section 4 — Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Continue to improve on your Facility knowledge.
2. Notify management on anything that prevent you from reporting to work prior to your scheduled time of work.
3. Chris has ZERO time bank hours remaining. He is expected to make every attempt to be at work each and every assigned shift. Any time missed will not be paid as he has exhausted his time bank. All request for time off can only be granted by the Facility Manager, Dave Olson, or the Deputy Facility Manager, Les Sonnenberg.

## Section 5 — Employee Comments (Optional) (Additional Space Available on Back)

None

## Section 6 — Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print)	Signature	Date
Christopher Lawrence	Christopher Lawrence	7-6-01
Manager/First Line Supervisor Name (Print)	Signature	Date
William R. Thigpen	William R. Thigpen	7/6/01
Next Higher Level Manager (Level 2 or FEC) (Print)	Signature	Date

WSRC-Law 64

7-11-01 - 2cc APPENDIX L - Page 1

(W. Lawrence, 7/11/01 - 2cc - Page 1 of 2)



Westinghouse Savannah River Company

## Constructive Discipline Assessment and Development

CURRY

Routing	Date
HR Representative	25573101
Personnel Coordinator	
Policy and Practices, 719-A	
Benefits and Records, 730-1B	

## Instructions

- Section 1 - If employee is on loan or seconded, manager/supervisor should consult with home department.
- Section 2 - Manager/supervisor should consult with HR Representative regarding the constructive discipline process. Written documentation for follow-up is required every two (2) months for employees on probation and every month for employees on FEC. Reasons for Discipline - See WSRC Service Manual 5B, Procedures 2.1, and 2.7.
- Section 3 - Manager/supervisor will give a brief summary describing the violation and indicate what disciplinary action will be taken.

Additional Comments - See instructions in the top right-hand corner of this form for routing. Note: The original form must be routed.

## Section 1 - Employee Information

Name	Social Security No.	<input type="checkbox"/> Exempt	Job Title
Lawrence, Christopher	252-27-7614	<input checked="" type="checkbox"/> Nonexempt	Building Operator
Home Department	Home Org Code	Loaned/Seconded Dept Org Code	ASD
NMMI / SEP	SEP	N/A	PSD
11/6/1987 11/6/1987			

## Purpose

To provide employee and their manager/supervisor an opportunity to meet, discuss, and document constructive discipline assessment and development opportunities.

## Section 2 - Constructive Discipline Action (Review with HR Manager/Representative)

Effective Date	Reason For Discipline
7/29/2001	Individual placed on probation

## Indicate Type of Constructive Discipline or Followup

- Corrective
- Corrective (Remainder of Shift Without Pay)
- Corrective (24 Hrs Without Pay)
- Corrective (40 Hrs Without Pay)
- Probation
- Probation (Remainder of Shift Without Pay)
- Probation (24 Hrs Without Pay)
- Probation (40 Hrs Without Pay)

- Probation Followup
- Final Employee Commitment (FEC) (80 Hrs Without Pay)
- FEC Followup
- Termination

## Section 3 - Summary Assessment Between Employee and Line Management (Additional Space Available on Back)

Chris missed a day this month due to one of his children being sick. He has had his training records updated and is now fully qualified as a building operator. Chris needs to have to plan ahead for any medical problems that his children may have to ensure he has someone to care for them and allow him to report for work as scheduled. You must understand that anytime not worked will be without pay and our level 2 Manager must approve it. You must also request this time off prior to your schedule time to report for work to your FLM or SOM.

## Section 4 - Recommended Development Actions and Specific Mutually Agreed Upon Goals (Additional Space Available on Back)

1. Maintain your building qualifications and continue to improve your knowledge of the facility
2. Notify your FLM or SOM on anything that prevents you from reporting for work at the prescribed time.
3. With zero time bank hours you are expected to make every effort to be at work each and every assigned shift
4. All request for time off without pay must be approved by the Facility Manager, Dave Olson or the Deputy Facility Manager.

Les Sonnenberg

## Section 5 - Employee Comments (Optional) (Additional Space Available on Back)

## Section 6 - Signatures

This Constructive Discipline Assessment and Development has been reviewed and discussed with me. I have been offered the opportunity to include written comments and sign the form. NOTE: Signature does not necessarily signify agreement with this assessment, but documents that a discussion was held. Signature does signify a commitment by the employee. Employee's signature is required when placed on Final Employee Commitment (FEC). Signatures of two levels of management are required.

Employee's Name (Print)	Signature	Date
Christopher Lawrence	Christopher Lawrence	7/29/01
Manager/First Line Supervisor Name (Print)	Signature	Date
Willard R. Triggen	Willard R. Triggen	7/29/01
Next Higher Level Manager (Level II if FEC) (Print)	Signature	Date

7/31/01 - Ecopy APPENDIX L

Employee, Manager, and Supervisor  
WSRC-Lawr6



**Procedure Manual 5B Human Resources Policies,  
Practices and Procedures**

**Practice 2.7 Employee Development and Constructive  
Discipline Program**

Rev. 7 05/17/00

Purpose

Scope

Terms and Definitions

Responsibilities

Employees

Human Resources

Human Resources (HR) Review Committee

Managers/Supervisors

Practice

1. Informative Contacts
2. Commendatory Contacts
3. Qualifying or Training Contacts (nonexempts only)
4. Constructive Discipline
  - A. Corrective Contact
  - B. Probation
  - C. Final-Employee Commitment (TEC)
  - D. Termination
5. Processing the Contact
  - A. Recording the Contact
  - B. Distribution of Copies

Records

References

**APPENDIX MA**

## Forms

### Requirements Control System

#### Procedure Manual 5B, Human Resources Policies, Practices and Procedures

#### **Procedure Revision Summary**

1. Procedure and Revision # 2.7, Rev 7
2. **Procedure Title:** Employee Development and Constructive Discipline Program
3. **Effective Date** - 05-17-00

#### **4. Procedure Changes Practice:**

1. **Informative Contacts** - revised 1<sup>st</sup> paragraph of section
4. **Constructive Discipline** - revised example in first paragraph

#### **Records** - Revised records Statement

5. **Training Requirements:** Supervision and employees should become familiar with the new/revised requirements. No additional training is required.

#### **Purpose**

This practice provides guidance on the administration of the Westinghouse Savannah River Company (WSRC) employee constructive discipline program, and the established method for documenting formal discussions between managers/supervisors and employees.

#### **Scope**

The practice applies to all full-service WSRC employees.

When an employee's performance is unsatisfactory, management should take corrective, rather than punitive, action. During the corrective period, the employee should receive specific guidance from manager/supervisor.

#### **APPENDIX MA**

Appropriate corrective action could include reassignment or demotion to a job in line with employee's capabilities or taking steps to terminate the individual. Acts of misconduct and willful violations of established policies or procedures may not require a warning to the employee if the matter is deemed sufficiently serious to warrant immediate termination. The correct process should be progressive in nature and commensurate with the seriousness of the case.

This practice does not cover contacts pertaining to fitness for duty. Human Re-sources must be contacted for guidance in cases involving fitness for duty, refer to Procedure Manual 5B, Practice 2.6.

The Personal Assessment and Development Process (PADP), refer to 5B 3.15

### **Terms and Definitions**

Definitions of terms used in this practice are in section 4.3, "Glossary of Terms."

### **Responsibilities**

It is the intent of management to provide guidance and assistance for the development of all employees. This is accomplished by

- building mutual confidence
- communicating strengths and weaknesses
- setting mutually agreed upon performance goals
- correcting unsatisfactory performance

### **APPENDIX MA**

## **Employees**

Employees are responsible for working effectively towards meeting the requirements of their positions and must maintain acceptable work performance. The employee must be familiar with and follow WSRC rules,-policies,-and procedures.

## **Human Resources**

Human Resources is responsible for the administration and interpretation of this policy. HR is also responsible for maintaining records of employee performance, non performance and any associated disciplinary actions taken.

### **Human Resources (HR) Review Committee**

The HR Review Committee is responsible for reviewing and approving constructive discipline actions and consists of:

line management, including the employee's manager /supervisor

HR Policy and Procedures

Equal Employment Operations (EEO)

HR consultant (represents HR director)

HR operating division lead/consultant

NOTE: General Counsel will be included in discussions of termination or constructive discipline cases that involve legal matters. Medical Department will be included in discussions of cases involving medical or absenteeism issues.

## **Managers/Supervisors**

Managers/supervisors are responsible for

identifying employee's performance issues

establishing and communicating standards of performance, policies, goals, and rules of conduct

providing training to the employee

## **APPENDIX MA**

participating in the deliberations of any disciplinary committees called on their personnel

ensuring that documentation or performance assessments and disciplinary actions are transmitted to HR in a timely manner

administering and documenting all contacts promptly, using OSR 5-317, "Employee Information Record," or 5-318, "Constructive Discipline Assessment and Development."

The manager/supervisor provides guidance to the employee on a daily basis. However, documentation of formal discussions is required as described in this procedure. Documentation of a formal discussion is accomplished by completing OSR 5-317 or OSR 5-318 for the following types of contacts:

informative

commendatory

qualifying or training (for nonexempts only)

constructive discipline

corrective

probation-

final employee commitment (FEC)

termination

## **Practice**

This practice is divided into 5 sub-practices:

1. Informative Contacts
2. Commendatory Contacts
3. Qualifying or Training Contacts (nonexempts only)
4. Constructive Discipline
5. Processing the Contact

## **APPENDIX MA**

### **1. Informative Contacts**

An informative contact (OSR 5-317) is held to ensure that matters of particular significance are understood by the employee (e.g., safety rules, procedure compliance, WSRC policies, conduct of operations, etc.). This contact is also used as a means of documentation that certain facts are being communicated to the employee (e.g., absentee record, excessive tardiness, loss of government owned or leased property etc.). This contact is not intended to be a part of the constructive discipline program.

An informative contact is maintained in an employee's Personnel Field File and not distributed. All informative contacts are removed from field file and destroyed after one year. If disciplinary action is taken within the one year period on the same subject, the informative contact may be referred to or attached.

### **2. Commendatory Contacts**

A commendatory contact (OSR 5-317) is held at the discretion of the manager/supervisor to document outstanding work performance or achievements. The commendatory contact may be used as supporting documentation for the annual Performance Appraisal (PADP, OSR 5-333) and is also forwarded to division HR to become part of the employee's permanent personnel records.

### **3. Qualifying or Training Contacts (nonexempts only)**

Qualifying or training contacts are conducted during the 180-day qualification period. They are required for new hires, following a lateral transfer or promotion within a seniority unit, or a transfer into a seniority unit. The manager/supervisor should communicate training progress at regular intervals to the employee. The contact may be completed as necessary to document discussions concerning training status and progress.

## **APPENDIX MA**

However, this form (OSR 5-317) must be completed at 60-day intervals for 180 days, or more if necessary.

Similar contacts should be held as necessary for jobs requiring specialized training and demonstrated acquisition of skills beyond the 180-day qualifying period.

Training records should be distributed to the Division HR Personnel Coordinator and forwarded to HR Personnel Records to become part of the employee's permanent records.

#### **4. Constructive Discipline**

Constructive discipline is used when needed to help motivate an employee to recognize responsibilities. This is also used to prompt the employee to comply with site policies, rules, and procedures (e.g., unsatisfactory job performance, attendance, misconduct, improper safeguarding and loss of government owned or leased property, etc.). Prior to initiating constructive discipline, details must be discussed with line management and Human Resources. Mutually agreed upon goals are set to help the employee improve performance. Every, effort is made to assist an employee with the improvement program including retraining and supervisory guidance.

In the event of unsatisfactory performance or conduct, managers/ supervisors should clearly understand their right to send an employee home. However, they should listen to the employee's position and document a statement in order to help understand all the facts before doing so. When possible, the HR operating division lead/consultant should interview the employee before sending him or her home.

#### **APPENDIX MA**

There are four types of contacts used within the constructive discipline program

- Corrective
- Probation
- Final Employee Commitment
- Termination

#### **A. Corrective Contact**

##### **Purpose and Approval**

- A corrective contact is held when an employee's job performance has failed to meet acceptable standards or after a specific incident. Before the corrective contact is held, pertinent facts should be collected and discussed with higher levels of management and the Human Resources representative. The facts should identify the problem areas and seriousness of any specific incident.
- Where the corrective contact is for deteriorating performance, it should be supported by previous documentation such as informative contacts. The object of the corrective contact is to develop a program that will result in improvement.
- The program should be designed so the employee clearly understands why performance is considered substandard and to encourage the employee to improve performance.
- When management determines that a specific incident warrants a corrective contact, the contact is reviewed with the employee.

**NOTE:** Corrective contacts must be reviewed by the HR lead/consultant before being presented to the employee.

#### **APPENDIX MA**

When approved by the HR Review Committee, the employee may be excused from work without pay for

- the remainder of the shift
- 24 hours,
- 40 hours of scheduled work time

**NOTE:** By law, exempt employees are not normally given less than a full week off without (*Fair Labor Standards Act*) pay. This is specified in the corrective contact. This time is allowed so the employee can consider the seriousness of the incident.

### Content

- During a corrective contact, the employee is given every opportunity to explain the actions. A mutual understanding of the situation and events leading to it is reached and an acceptable program is developed to aid in performance improvement or to prevent recurrence of a specific incident.
- The employee should clearly understand why a corrective contact is being given and that the performance record will be placed in the department field file and the employee's personnel file. It is also important that the employee fully accepts the deficiency and makes a commitment to correct the problem. A development program must be outlined in the "Agreed Upon Goals" section of the contact. The employee must understand this is a program to guide performance improvements.

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## **B. Probation**

### **Purpose and Approval**

Probation may be used

- when management determines that an employee's failure to improve unsatisfactory job performance or conduct may result in reassignment, demotion, or termination
- when the employee has failed to respond to other corrective discussions
- as initial corrective action where serious misconduct is involved

Probation must be reviewed by the HR Review Committee.

Before an employee is given a probationary contact, the details of the contact are always discussed with members of higher management. The contact must be approved by the employee's Level 2 manager. The purpose of probation is to

- clearly identify the deficiency or problem and its seriousness
- state what remedial action is required by the employee
- encourage and provide opportunity for corrective effort by the employee
- notify the employee that reassignment, demotion, or termination may be the result of continued unsatisfactory performance or misconduct

When management determines that a specific incident warrants probation, the commitment is reviewed with the employee. The employee may be excused from work with-out pay for remainder of the shift

- 24 hours, or
- 40 hours of scheduled work time

### **APPENDIX MA**

**Note: By law, exempt employees are not normally given less than a full week off without pay.**

- This is specified in the probationary contact. This time is allowed so the employee can make a decision concerning willingness to make a commitment to correct the problem.

### **Content**

When being placed on probation, it should be clearly understood that the employee is being placed on probation for unsatisfactory job performance or misconduct

- the employee's job status is in jeopardy
- the employee is not eligible for promotion or transfer for a minimum of one year

In unusual cases, a transfer may be considered if the nature of the job assignment contributes to the employee's problem and/or management determines a different job assignment substantially improves the employee's chances of overcoming the problem.

The discussion and contact should include a clear statement of deficiencies in job performance or conduct with specific examples. A program for improvement with definite goals should be agreed upon and management should make every effort to assist the employee in meeting these goals. The employee is told that the probation is for a minimum of one year and management will review progress on a monthly basis. When the remedial conditions have been met, the probation may end.

### **APPENDIX MA**

### **Follow-up**

To ensure that probation accomplishes its purposes, the following actions are required:

- The employee's progress is reviewed by the manager/supervisor with an informal discussion each month and a documented formal discussion (follow-up contact) every two months.
- The discussions include a review of the employee's progress. In cases where progress is satisfactory, the discussion and record may be brief.
- OSR 5-318 is used to record the formal discussions.
- All contacts concerning the employee's status and progress are reviewed by the Level 3 manager.
- Discuss cases where satisfactory progress is not being made with the HR operating division lead/consultant.
- The Level 2 manager decides to end an employee's probationary period, with concurrence of the HR operating division lead/consultant and HR Policy and Procedures.

### **C. Final Employee Commitment (FEC)**

#### **Purpose and Approval**

Final employee commitment may be used when

- an employee's performance has not improved satisfactorily during the probation period and termination may result
- management determines that an incident of serious nature warrants FEC

Final employee commitment must be approved by the HR Review Committee.

### **APPENDIX MA**

Before an employee is given a final employee commitment contact, the details of the contact are always discussed with members of higher management. The contact must be reviewed by Human Resources Policy and Procedures. The purpose of final employee commitment is to:

- clearly identify the deficiency or problem and its seriousness
- state what remedial action is required by the employee
- encourage and provide opportunity for corrective effort by the employee
- notify the employee that termination may be the result of continued unsatisfactory performance or misconduct

When management determines that the constructive discipline action is a final employee commitment, the commitment is reviewed with the employee. The employee is then excused without pay for a minimum of 80 hours of work time, depending on the severity of the deficiency or problem. The return to work date and time are specified in the FEC contact. This time is allowed so that the employee can make a commitment for continued employment. If an employee prefers to resign rather than make this commitment, the resignation is accepted.

The final employee commitment contact is conducted by the Level 2 manager or designee. The employee's immediate manager/supervisor is present. The employee must sign the contact agreeing to the commitment to take necessary corrective actions. The employee should also understand (written in contact) that failure to keep the commitment may result in termination.

## APPENDIX MA

## **Content**

When being placed on FEC, it should be clearly understood that

- the employee is being placed on FEC for continued unsatisfactory job performance or serious misconduct
- the employee's job status is in jeopardy
- the employee is not eligible for promotion or transfer for a minimum of one year.

In some cases, a transfer may be considered if the nature of the job assignment contributes to the employee's problem and management determines a different job assignment substantially improves the employee's chances of overcoming the problem.

The discussion and contact should include a clear statement of deficiencies in job performance or conduct with specific examples. A program for improvement with definite requirements is discussed and management should make every effort to assist the employee in meeting these requirements. Signing of the contact is required and signifies the willingness of the employee to make the effort to meet the requirements. The employee is told that the FEC is for a minimum of one year and management will review progress on a monthly basis. When the remedial conditions have been met the FEC may end.

## **Follow-up**

To ensure that final employee commitment accomplishes its purposes, the following action is required:

- The employee's progress is reviewed by the manager/supervisor with a documented formal discussion (follow-up contact) each month.
- The discussions include review of the employee's progress. In cases where progress is satisfactory, the discussion and record may be brief.
- OSR 5-318 is used to record the formal discussions.

All contacts concerning the employee's status or progress are reviewed by the Level 3 manager.

Cases where satisfactory progress is not being made should be discussed with HR Policy and Procedures.

The Level 2 manager, with concurrence of the HR operating division lead/consultant and HR Policy and Procedures, decides to end an employee's final employee commitment period.

#### **D. Termination**

Document on the performance record form the effective date and reason for termination.

### **5. Processing the Contact**

#### **A. Recording the Contact**

The manager/supervisor summarizes the discussion on performance record form. The write-up is confined entirely to statements of fact and should not offer opinions or assumptions.

If an employee objects to any statements in the write-up, the opposing points of view are recorded by the manager/supervisor or employee in the appropriate section of the form or attached to it.

The employee should read and sign the contact indicating that discussions were held.

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## **B. Distribution of Copies**

The original copy of all constructive discipline contacts must be forwarded to the division HR. This document becomes a part of the employee's personnel records. A copy is retained in the department file and the original routed to the Division HR Lead/Rep, Personnel Coordinator (if non-exempt employee), HR Policy and Procedures Group, and forwarded to HR Benefits and Records for retention.

### **Records**

Records generated as a result of implementing this procedure are processed in accordance with Procedure Manual IB, MRP 3.31, "Records Management". If employees wish to review their file, they may do so through a request to their manager/supervisor. The manager /supervisor must accompany the employee while reviewing the file.

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## **APPENDIX MB**

### **Procedure Manual 5B Human Resources Policies, Practices, and Procedures**

#### **Procedure 2.9 Termination Practices**

Rev. 6

06/18/01

Purpose

Scope

Terms and Definitions

Responsibilities

- Division Human Resources (HR) Consultant/Lead
- HR Review Committee
- Human Resources
- Level 1 Manager
- Level 2 Manager
- Line Management
- WSRC President

Practice

- 1. Involuntary Termination
  - A. Lack of Work
  - B. Discontinued
  - C. Discharged
- 2. Effect of Termination on Service and Benefits
  - A. Last Day of Service
  - 1. Allowances At Termination

## **APPENDIX MB**

- Termination Procedure
  - A. Initiating Termination Form (OSR 5-8. Change of Status Report)
  - B. Voluntary Termination
  - C. Clearance Checkout
  - D. Pay for Termination Processing Time — Voluntary
  - E. Pay for Termination Processing Time — Involuntary
  - F. Transportation
  - G. Absentee Termination

Records

References

- Requirements Control System

Attachments

**Procedure Manual 5B, *HR Policies*,**

***Practices and Procedures Procedure Revision Summary***

1. **Procedure and Revision #:** 12.9, Rev 6
2. **Procedure Title:** Termination Practices
3. **Effective Date:** [6/18/01]
4. **Procedure Changes**

**Added the following sentence to section 2, A-2-**

An employee cannot use timebank beyond the last day of scheduled work to extend a termination date. For example, an employee who voluntarily quits will be separated as of the employee's last day worked and timebank will not be approved to extend that date. An employee who is retiring cannot use

**APPENDIX MB**

timebank to extend the employee's retirement date. Since employees can only retire at the end of the month, they can use timebank or unpaid leave, if they have no remaining itimebank during the month of retirement only.

## **5. Training Requirements:**

As with any procedure revision, those employees affected by the procedure need to familiarize themselves with the ichanges. No additional training is required.

### **Purpose**

This practice establishes requirements and responsibilities for voluntary or involuntary termination of employment from Westinghouse Savannah River Company (WSRC).

### **Scope**

These practices apply to all WSRC employees. Sections that apply specifically to exempt, nonexempt, or selected overtime position (SOP) employees are noted as such.

The following practices are addressed elsewhere in the 5B manual:

- nonexempt seniority and placement, Practice 2.2, "Staffing"
- benefits, Practice 2.18, "Employee Plans and Benefits"
- timebank allowances, Practice 2.19, "WSRC Timebank Plan"

### **Terms and Definitions**

Definitions are in 4.3, "Glossary of Terms."

## **APPENDIX MB**

## **Responsibilities**

### **Division Human Resources (HR) Consultant/Lead**

The division HR consultant/lead is responsible for reviewing all “Discharge” and “Discontinue” termination cases with the cognizant Level 1 manager before they are submitted to the WSRC president for final approval.

### **HR Review Committee**

The HR Review Committee is responsible for reviewing all discharge and discontinuance cases as presented by the division HR manager and line management in order to support or make recommendations to line management about final disposition.

### **Human Resources**

Human Resources is responsible for

- initiating and sending the termination notice, using the electronic notification network
- preparing the employee termination packet and distributing it to the employee’s supervisor/manager
- inputting the employee’s information into the Service Center database
- collecting all completed forms and conducting an exit interview with the employee on his/her last day of work (if requested by the employee). If the employee waives the exit interview, waiver must be documented in the employee’s personnel file.
- taking possession of the employee’s security badge and issuing a temporary pass for the employee to exit the site
- delivering and ensuring the employee’s completed termination packet is placed in the employee’s personnel file and the employee’s badge is delivered to the badge office.

## **APPENDIX MB**

### **Level 1 Manager**

The Level 1 manager is responsible for reviewing all "Discharge" and "Discontinue" termination cases with the division HR manager before the cases are submitted to the WSRC president for final approval.

### **Level 2 Manager**

Level 2 managers are responsible for authorizing the following terminations

- lack of work
- military service
- pensioned

### **Line Management**

Line management is responsible for

- authorizing terminations categorized as "deceased" or "resigned"
- encouraging employees to give advance notice of termination
- notifying the division HR manager or representative of the intended effective date of a termination

### **WSRC President**

The WSRC president or designee is responsible for approving any "Discharge" or "Discontinue" terminations.

### **Practice**

The practice is divided into 3 subsections:

1. Involuntary Termination
2. Effect of Termination on Service and Benefits
3. Termination Process

### **APPENDIX MB**

## **1. Involuntary Termination**

### **A. Lack of Work**

Nonexempt full-service employees are terminated for "lack of work" in accordance with 5B, Practice 2.2, when the company has no work available for them.

If an employee not designated to be terminated, volunteers to terminate during a WSRC RIF, the termination is classified as "Lack of Work" rather than "Resignation." Since the termination is voluntary, the employee is eligible only for the benefits accorded a "Resignation," except for service credit, e.g., adjusted service date (ASD), and applicable extension of Group Life Insurance coverage.

NOTE: An employee may elect to take "Lack of Work" termination, with associated benefits, when a demotion due to a RIF would result in a 15% or greater cut in base wages. DOE Contracting Officer approval is required for this option.

### **B. Discontinued**

An employee terminated for causes not warranting discharge is categorized as "Discontinued". Employees are **not** discontinued when reasons for termination warrant discharge. Reasons for discontinuance include:

- extended and unexcused failure to report for work. An employee must be discontinued if such absence exceeds 16 consecutive calendar days. An employee may be terminated as a result of shorter absences if circumstances warrant.
- failure to return from a leave of absence
- total and permanent disability when ineligible for pension

## **APPENDIX MA**

- unsuitability for present work (i.e: medical discontinuance and disqualifying) or other available work
- acts or failures which justify termination and are either involuntary or beyond the employee's control

**Example:** Excessive absenteeism or poor performance due to lack of mental or physical capability rather than to negligence or lack of effort.

When causes for termination are both voluntary and involuntary in nature, line management meets with the division HR manager to carefully assess the individual case and determine the type of termination warranted.

### **C. Discharged**

1. An employee is "Discharged" when his or her job performance or other conduct is unacceptable. Reasons for "Discharge" include, but are not limited to:

- incompetence/substandard job performance
- negligence
- insubordination
- severe or repeated safety and/or security infraction(s)
- dishonesty
- fighting on the job
- horseplay
- gambling
- drinking or being intoxicated on the job
- sleeping on the job
- falsification of records

### **APPENDIX MB**

- tampering with RC&HP samples, devices, or dosimeters
- unauthorized removal or use of Government property (including computers)
- loss, damage, or misuse of Government property resulting from employee negligence and in
- failing to meet personal responsibility standards
- intentional damage to site, employee, contractor, or vendor property
- excessive absenteeism
- repeated traffic violations

2. Employees are:

- expected to conduct themselves in a non-provocative manner in all WSRC facilities, including the cafeteria, locker rooms, parking lots, etc.
- entitled to their own opinions and beliefs but retain responsibility for comments, actions, or gestures toward other employees that could cause an adverse reaction

3. Employee conduct that can lead to disciplinary action as serious as immediate discharge, include ,but are not limited to:

- threat to do bodily harm
- physical, mental, or sexual harassment (assault or abuse)
- abusive, profane, antagonistic, or provocative language directed toward another regarding race, gender, religion, dress, physical appearance, etc.
- Discharge may also be indicated as a result of a series of similar but less serious acts or failures which, after warning, warrant termination. This decision is made jointly by the appropriate Level 2 and division HR managers.

4. If discharge is warranted, the termination is handled as such even though it might be more expedient to discontinue the employee.

## **2. Effect of Termination on Service and Benefits**

### **A. Last Day of Service**

1. In computing pay and benefits, the last day of service is the:

- last day of actual work
- last day of leave of absence
- date of retirement
- date of death

2. Timebank hours remaining or other termination allowances do not extend an employee's length of service beyond the last day of service as listed.

**Example:** An employee who retires December 31 receives timebank allowance for the following year but does not receive service credit for that timebank allowance. See Practice 2.19, "WSRC Timebank Plan."

An employee cannot use timebank beyond the last day of scheduled work to extend a termination date. For example, an employee who voluntarily quits will be separated as of the employee's last day worked and timebank will not be approved to extend that date. An employee who is retiring cannot use timebank to extend his/her retirement date. Since an employee can only retire at the end of the month, he/she can use timebank or unpaid leave, if there is no remaining timebank, during the month of retirement only.

## **APPENDIX MB**

## **B. Allowances At Termination**

### **1. Timebank**

Timebank allowances at termination are addressed in 5B, Practice 2.19, "WSRC Timebank Plan."

### **2. Military Service**

Termination for military service in excess of 1 year is addressed in 5B, Practice 2.18, "Employee Plans and Benefits." The reason for termination is shown on the Change of Status form (OSR 5-8) as "MS—Military Service." The termination date is the last day of work, even if that date is before the employee actually enters military training or service.

### **3. Pay For Time Spent In Termination Processing**

When management's decision is "Discharge," the employee receives pay for time required to complete onsite termination processing (Medical, RC&HP, Benefits, etc.).

### **4. Health Care Insurance**

The *Employee Benefits Handbook* provides detailed information on how health care and other site insurance plans are affected by an employee's termination. Individuals and managers/supervisors should contact HR Benefits and Records for the most current information and any necessary assistance.

## **3. Termination Procedure**

Advance notice of termination is especially important if an employee terminates with five or more years of company service and is eligible for a deferred pension. Advance notice allows time for preparation of the formal, written notice of deferred pension eligibility given to the employee at termination.

When employees decide to terminate (resign, military service, pension), they submit a letter of termination to their immediate management. This letter states the last day to be worked and the reason for leaving.

When an employee is terminating, management notifies the division HR lead/consultant who notifies the division HR Service Center.

**A. Initiating Termination Form (OSR 5-8, Change of Status Report)**

Management and Human Resources initiate an OSR 5-8 for each terminating employee.

**B. Voluntary Termination**

The cognizant HR Lead/Rep:

- completes a Change of Status (OSR 5-8)
- issues electronic notification of termination using an e-mail standard distribution list (indicate "Official Use Only" on electronic document)
- issues the terminating employee a termination package and a checkout sheet, including instructions on the out-processing procedure.

The employee completes the termination package, including checkout sheet, and brings it to HR for the final review on the last day of work.

**C. Clearance Checkout**

1. At the time termination processing is begun, management: reclaims all temporary passes and permits

- verifies and ensures proper disposition of classified documents or materials and secures clearance from Document Control, when needed
- ensures that the employee turns in issued safety-equipment, tools, keys, or any other site property
- ensures that signature authority, cipher codes and all other non-tangible permissions are revoked

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schedules a whole body count or fast scan for the employee at Building 735-4A. This process requires about 40 minutes and is normally completed a few days before termination. It is not necessary if the employee was never assigned where radioactive materials we represent.

- ensures that personnel who have been assigned, at any time during WSRC employment, to work in areas where radioactive materials were present submit a bioassay sample(preferably 500 ml) to Radiological Control Operations Department. Ask RCO Management any questions regarding what personnel are required to submit bioassay samples.
- APPENDIX MB
- makes onsite and offsite transportation arrangements for the person terminating when necessary
- scheduling the terminating employee with the appropriate area Medical station for medical clearance. Medical clearance can be handled at Building 719-A if clearing through the AreaMedical is not possible. However, advance notice must be given to 719-A Medical so that the employee's Area Medical folder may be reviewed.
- sends the terminating employee to HR Employment for final termination processing
- ensures reconciliation of imprest funds, accounts (cash account) for which employee is responsible

2. Special handling is required for discharge and discontinuance cases. Employees being discontinued or discharged must be escorted by their management until the termination process is complete. Security personnel may be requested for support if situation warrants precautionary measurements.

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### 3. Exit Interviews

An exit interview is conducted and documented by the division HR Lead/Rep if requested by the employee. The interview deals with the employment relationships of the terminating employee. The documentation is placed in the terminating employee's file.

### **D. Pay for Termination Processing Time — Voluntary**

1. Each employee, regardless of their regular shift schedule, must physically process through HR on Day Shift, Monday through Friday.
2. A nonexempt or SOP employee who terminates voluntarily and properly processes out through HR and Medical receives a termination allowance equivalent to three hours straight-time pay a tbase rate, or for actual time worked, whichever is greater.
3. Normally, the time record for the employee shows, for the day of termination, five hours' work and a three-hour allowance for termination processing.
4. Each nonexempt employee processing through HR and Medical during the Day Shift receives wages:

- Enter a termination notation, under "Comments," on the timecard.
- Management approves the time record.
- Management submits a timebank schedule with the final time record when a terminating employee is eligible for timebank allowance. Clearly mark the schedule "Timebank Allowance," showing the number of timebank hours due.

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### **5. While Working Day Shift**

A nonexempt employee who terminates while working the day shift performs regular work up to the time necessary to start the termination processing. This means reporting for processing on the day of termination, no earlier than 1 p.m.

### **6. Outside of Regular Work Schedule**

A shift employee who reports for termination clearance during non-scheduled work hours or remains for clearance after having worked the 12-8 shift receives the termination processing pay in addition to any pay received for work performed during regular shift on that day (including premium pay).

7. The final check for terminating employees is mailed following the normal pay period for that employee.

## **E. Pay for Termination Processing Time — Involuntary**

### **1. Discharged Employee**

A discharged employee, regardless of shift assignment, is terminated on Day Shift. This does not prevent management from sending an employee home during the employee's regular shift to await final disposition.

A discharged employee is paid for the actual time required for physically processing through HR and Medical, including overtime payment. Management arranges with Payroll for the employee to receive full wages prior to leaving the site. If this is not accomplished, remaining wages are paid in the next pay period.

### **2. Discontinued Employee**

A discontinued employee is paid a 3-hour termination allowance or for actual time worked, whichever is greater.

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### **3. Employee Terminated for Lack of Work**

An employee terminated for lack of work processes out through HR and WSRC Medical during Day Shift, Monday through Friday.

The schedule of a shift employee is changed as necessary to permit termination while working Day Shift. The change is made to avoid paying premium pay.

An employee terminated for lack of work is paid in the same manner as one who terminates voluntarily, unless the computed termination payment is less than the amount of pay to which the employee is entitled for actual time required in termination processing. In this case pay is in accordance with subsection 3-E.2.

### **F. Transportation**

A voluntarily terminating employee is expected to provide his or her own transportation between the area and the location where paperwork will be completed on the day of termination. A discharged or discontinued employee is escorted through the termination process.

When employee is involuntarily terminated, discharged or discontinued, without prior notice, management assists with arranging transportation. Transportation is provided, when necessary, to the barricade nearest to the employee's home at the end of the termination process.

### **G. Absentee Termination**

#### **1. With Notice**

When an employee terminates by letter or other notice, the department notifies the division HR lead/consultant, listing site property issued to the employee which must be returned.

Human Resources completes OSR 5-8, "Change of Status," and forwards it to HR Employment. HR also sends out the standard termination notice, via electronic mail, to the appropriate distribution.

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HR processes and distributes OSR 5-8, and prepares a certified letter, with a copy to Safeguards and Security, to the employee requesting return of the badge and any other site property in the employee's possession, and execution and return of:

- Security Termination Statement
- W-2 Letter
- Employment Termination Statement, CPC-16
- Benefit Eligibility Forms, as appropriate

## 2. Without Notice

Occasionally, an employee is terminated due to an absence during which the employee has not been heard from and the department can secure no information. In this situation, the employee's division HR Lead/Rep initiates a Change of Status report, forwards it with an explanatory note as required, and the matter is handled in a manner similar to subsection 3-G.1.

## Records

Records generated as a result of implementing this procedure are processed in accordance with Procedure Manual IB, MRP 3.31, "Records Management"

Termination records contain a complete explanation of death that resulted from occupational illness or injury (See Practice 2.24, "Disability Compensation").

## References

- DOE 1324.5B, Records Management Program
- Procedure Manual IB, MRP 3.31, "Records Management"
- Procedure Manual 5B, 2.8, "Employee Records"
- WSRC-EM-96-00023, WSRC Retention Schedule Matrix

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Procedure Manual 5B Human Resources Policies, Practices and Procedures **Procedure 2.12 Company Plan Absences**

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## **Purpose**

This document provides guidance about Westinghouse Savannah River Company (WSRC) pay practices for time not worked due to a company plan absence, in order to maintain consistent and equitable pay administration at the Savannah River Site (SRS).

## **Scope**

These practices apply to all full-service WSRC employees. Policies that apply specifically to exempt, selected overtime position, or nonexempt employees are noted as such.

The following absences are excluded, and addressed separately, from the scope of this practice:

- pay and benefits while in military service are addressed in Practice 2.18, "Employee Plans and Benefits"
- part-time, student and limited-service employees, refer to practice 2.4
- timebank pay, refer to Practice 2.19
- disabilities and medical leaves, refer to Practice 2.24
- non-medical leaves of absence, refer to Practice 2.25

## **Terms and Definitions**

See 5B. Procedure 4.3, "Glossary of Terms", for definition of the following term:

- family, immediate

## **Responsibilities**

### **Employees**

Employees are responsible for

- reporting to work regularly and on time in accordance with their assigned schedule
- informing supervision, as far in advance as possible, if unable to report for work, including the reason for, and expected duration of, the absence
- completing TACS, correctly

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## **Human Resources (HR)**

HR is responsible for

- resolution of questions about, and conflicts with, these practices
- assisting management in obtaining necessary information on an employee who is absent for unexplained or questionable reasons

## **Level 2 Managers**

Level 2 managers are responsible, jointly with HR, for approval or denial of special and unusual requests for paid or unpaid time off.

## **Management**

Management is responsible for

- controlling absenteeism impressing on each employee the importance of regular attendance making it clear to each employee that when unable to report for work, it is the employee's responsibility to notify management as far in advance as possible determining the reason for absence, anticipated duration, and eligibility for pay
- taking appropriate action when an employee's attendance is unsatisfactory
- providing each employee with billfold card. "Reporting Absences." OSR 5-17, to ensure knowledge of how to report an absence
- telling each employee to use the 800 phone number (1-800-278-5009) to report a personal emergency affecting work attendance when the call is long distance (Collect calls are not accepted.)
- requesting assistance from HR to determine the cause for unexplained absence(s)

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- maintaining necessary records, i.e.. ensure TACS records are accurate
- providing personnel records to receiving organizations when employee transfers, i.e.. Foreman's Time Record, training records, etc.

### **Practice**

Employees report an inability' to be at work to line management. Absences may be reported by telephone to management by calling the number listed on OSR 5-17, "Reporting Absences."

Pay practices for time not worked are addressed in subsections:

1. Holidays
2. Jury Duty
3. Court Appearances as a witness at Company request
4. Time Off to Vote (Nonexempt and Selected Overtime Positions)
5. Adverse Weather and No Work Available (Nonexempt and Selected Overtime Positions)
6. Death in Immediate Family
7. Other Absences (Nonexempt and Selected Overtime Positions)
8. Absenteeism (Nonexempt and Selected Overtime Positions)
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NOTE: Effect on Other Hours—hours paid for but not worked addressed in this practice and credited towards time worked:

In computing hours worked over 40 in the workweek:

- appearance in court as a witness at company request.

In determining the sixth and seventh day worked in the workweek:

- appearance in court as a witness at company request
- holiday scheduled to work
- death in immediate family
- jury duty
- time off to vote

## **1. Holidays**

WSRC holiday observation includes paying employees who are scheduled off because of the holiday, if certain conditions are fulfilled. When a holiday falls on a day of rest, an 8-hour holiday allowance is paid at the employee's regular rate.

All full-service WSRC employees, regardless of length of service, are included in these holiday pay allowances.

### **A. Holidays Observed**

Eleven holidays are observed at the Savannah River Site (SRS):

- New Year's Day
- President's Birthday (third Monday in February\*)
- Good Friday
- Memorial Day (last Monday in May)
- Fourth of July
- Labor Day
- • Thanksgiving Day
- Friday Following Thanksgiving Day
- Christmas Eve
- Christmas Day
- Personal Choice

## **B. Holiday on Saturday or Sunday**

When the day of observance of a holiday differs from the date of the holiday, the day of observance becomes the holiday as described below.

### **1. Saturday Holiday**

When a holiday falls on Saturday, the preceding Friday is observed as the holiday for those employees regularly scheduled to work Monday through Friday. Employees that work other than Monday through Friday schedules observe the holiday on Saturday.

### **2. Sunday Holiday**

When a holiday (other than Christmas Eve) falls on a Sunday, the following scheduled workday is observed as the holiday for all employees.

### **3. Christmas Eve on Friday or Sunday**

When Christmas Eve falls on Friday, the preceding scheduled workday is observed as the holiday for those employees regularly scheduled to work Monday through Friday.

When Christmas Eve falls on Sunday, the following scheduled, non-holiday workday is observed as the holiday for all employees.

## **C. Holiday Work**

### **1. Scheduling Holiday Work**

Those employees necessary to maintain continuous operations, 24-hour-per-day and 7-days-a-week, cover necessary functions, and shift workers on a scheduled training week are scheduled to work on a holiday.

If, in the judgment of management, it is practical to curtail operations or dispense with normal services on the holiday, employees assigned to those operations or services are scheduled off.

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## **2. Selection of Employees for Holiday Work (nonexempt employees)**

If it is necessary to choose employees to work on a holiday, selection is by seniority from qualified employees who normally would have worked, performing the same tasks during the same hours.

Second consideration is given to qualified employees in related groups within the department performing similar or related work during the same hours.

The intent of this policy is to ensure that the method of selecting employees to work overtime on a holiday is essentially the same as it would have been if the holiday had not been observed. Required work on a holiday should be performed by the employees who would have worked the same hours. When an entire work group is not required to work on a holiday, selection is made based on the overtime roster.

## **D. Holiday Allowance (Nonexempt and Selected Overtime Positions)**

### **1. Requirements for Holiday Allowance**

To qualify for a holiday allowance, an employee is required to work the regular scheduled hours on the last workday prior to the holiday and first workday following the holiday unless absent for reasons acceptable to management (acceptable reasons include timebank time off, company plans, etc.).

An employee receives no allowance for a holiday on which the employee is scheduled to work if absent without the permission of management. An unexcused absence in a workweek which affects an employee's holiday pay in the:

- following workweek must be noted in the "Comments" section of the TACs record for the following workweek timecard
- previous week requires supervision notifying Payroll immediately

## **2. Scheduled Workday**

An 8-hour holiday allowance, computed on the basis of the employee's regular rate (no premium included), is paid:

- for work performed on a holiday falling on the employee's scheduled workday
- to an employee who requests to observe a holiday that falls on a scheduled workday. Timebank hours may be taken in conjunction with the holiday allowance; however, a full-shift timebank day cannot be taken on a holiday.

## **3. WSRC-designated holiday**

A straight-day, nonexempt or selected overtime position employee on a schedule other than Monday-Friday (8 hours-per-day) is required to:

- make-up
- use timebank hours or
- be excused without pay in order to be accounted for a full work week schedule

Exempt employees on straight day schedules ("8 to 10 hours per day) observe holidays according to their regular schedule. Exempt employees on extended work schedules (similar to shifts 22, 23, 24, and 42) refer to Practice 2.23, Section G. 4. for additional guidance concerning holiday observance.

**NOTE:** When management requires nonexempt employees on shifts or day schedules X3 and X4 to observe a WSRC-designated holiday (excluding personal holiday) on a scheduled workday, employees are considered to have the same regular schedule as if the day were not a holiday and are paid a holiday allowance based on the regular shift schedule. In this scenario, employees in exempt and selected overtime positions observe the holiday based on the regular shift schedule.

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#### **4. Scheduled Day of Rest**

An 8-hour holiday allowance, computed on the basis of the employee's base rate, is paid when a holiday falls on the rotating shift employee's scheduled day of rest.

NOTE: Employees on a 9/80 or 4/10 straight-day schedule observe the preceding scheduled workday if the designated holiday falls on Friday, their day of rest. The following scheduled workday is observed if the designated holiday falls on Monday, their day of rest.

### **E. Holiday Pay Practices for Employees on Disability**

#### **1. Scheduled Workday**

If a holiday falls on a scheduled workday for which an employee is receiving disability pay, no holiday allowance is paid.

#### **2. Scheduled Day of Rest**

If a holiday falls on a scheduled day of rest during the period for which an employee is receiving disability pay, a base-rate holiday allowance is paid in addition to normal disability pay.

### **F. Holiday Pay When on Excused Absence (30 or Less Consecutive Calendar Days)**

#### **1. With Pay**

If a holiday falls on a scheduled workday for which an employee is excused with pay, no additional holiday allowance is paid. If a holiday falls on a scheduled day of rest within the workweek and during an absence excused with pay, the base-rate holiday allowance for that day is paid.

#### **2. Without Pay**

When a holiday falls either on a scheduled workday or on a day of rest during an absence excused without pay, the base-rate holiday allowance is paid.

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## **G. Holiday Pay When on Leave of Absence (In excess of 30 days)**

### **1. With Full or Partial Pay**

If a holiday falls on a scheduled workday during an employee's leave of absence with full or partial pay, no additional holiday allowance is paid.

If a holiday falls on a scheduled day of rest during an employee's leave of absence with full or partial pay, a base-rate holiday allowance for that day is paid.

### **2. Without Pay**

If an employee is on a formal leave of absence without pay, the employee is not eligible for holiday compensation.

## **H. Personal Holiday Policy**

### **1. Selection**

Each employee is required to pre-select their personal holiday and schedule the day of choice as directed by his/her division/facility management.

### **2. Scheduling**

The Personal Holiday of choice must be scheduled and observed on a workday according to the employee's regular shift schedule. The individual is scheduled off from work for the 24-hour work day period.

### **3. Pay**

The employee is paid an 8-hour holiday allowance. Nonexempt and selected overtime position employees may use timebank hours, make-up time worked within the workweek, or excused without pay to compensate for a full work week schedule.

Exempt employees receive holiday pay according to their regularly scheduled workday.

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#### **4. Turnover**

When turnover time (0.2 or 0.5 hour) is not part of an employee's work requirements schedule (i.e.. employee does not work any hours on the personal holiday) make-up time, timebank time, or excused without pay for the turnover time should not be required in conjunction with the personal holiday. Pay is not granted for the turnover time when not required.

#### **5. Tracking**

Use the time class Personal Holiday for pay, timekeeping, tracking and monitoring. The supervisor/manager tracks this to ensure the employee observes the holiday and that only one is taken during the calendar year. Employees newly hired before July 1 of a year qualify for a Personal Holiday. Employees terminating before observing the holiday are not compensated. Personal Holidays are not carried over into a new calendar year and are forfeited if not used.

#### **2. Jury Duty**

The civic obligation to serve on a jury when called is recognized by the policy which provides pay while absent from work on such duty. Each employee is eligible under this policy, regardless of service.

Employees are paid their regular rate for time spent on jury duty during scheduled hours on scheduled days of work. The employee receives no pay for jury duty on scheduled days of rest.

An employee called on jury duty while on vacation/personal leave is permitted to reschedule this time off beginning with the first day of jury service.

Employees keep jury fees earned.

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### **A. Notification of Call**

When called as a juror, the employee should notify supervision promptly so that necessary rescheduling may be done. The employee should provide supervision with proof of call, if so requested.

### **B. Notification of Jury Duty Status**

An employee excused from work because of jury duty is expected to keep supervision informed of jury duty status on a daily basis when possible. This allows supervision to make necessary arrangements.

### **C. Confirmation of Having Served**

Management requires confirmation of having served as a juror from employee, following the jury duty.

### **D. Jury Duty in Excess of 30 Consecutive Calendar Days**

An employee who is absent for jury duty in excess of 30 consecutive calendar days must be covered by a leave of absence with pay and *service* credit.

### **E. Jury Duty Work Schedules**

1. A shift employee serving daytime jury duty:

- is rescheduled to the shift day hours on the employee's regularly scheduled workdays on which daytime jury duty is performed or expected to be performed. Regularly scheduled days of work and rest are not changed when an employee is on jury duty.
- is not paid a premium for a change of schedule connected with jury duty
- resumes their regular work schedule on the first regularly scheduled day of work following release from jury duty, except as provided below.

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2. In addition to the above guidelines, an 8-hour shift worker serving on daytime jury duty:

- works regularly scheduled hours on regular scheduled workdays on days when jury duty is not performed
- is occasionally scheduled to work the 12-8 shift on the day following release from jury duty. If released so late that it is not reasonable to expect the employee to work the 12-8 shift the following day, the employee may request and be granted a voluntary change of schedule to the 8-4 shift for the day following jury duty.

3. 12-hour shift workers may be required to report for the first day of jury duty the morning the employee completes night shift. When this occurs, the employee is expected to work until 8 hours prior to the reporting time. The employee receives jury duty' allowance for all excused hours.

4. Occasionally a shift employee working the 4-12 or night schedule may be selected for a short-term evening jury session, such as a magistrate's jury, in a community close to the site. The employee is not rescheduled to day-shift hours but is temporarily excused from work for the time necessary. The employee is expected to report to work before and/or after jury duty if at least one continuous hour can be worked during the shift.

5. A day employee called for jury duty remains on the employee's regular schedule.

#### **F. Availability for Overtime (Nonexempt)**

Employees are considered available for overtime unless the overtime hours interfere with the jury duty. Employees are not considered available for overtime during hours required for jury duty or 8 hours prior to jury duty starting each day.

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## **G. Intermittent or Part-Time Jury Service**

When an employee is selected as a juror but is temporarily excused, the employee is to report to work if it can reasonably be expected that at least one hour can be worked.

## **H. Pay While on Jury Duty (Nonexempt and Selected Overtime Positions)**

### **1. Computation**

Pay is computed by multiplying the employee's regular rate (no premium included) by the number of scheduled hours which the employee would have worked during the period of absence due to jury duty. When a jury is locked up (sequestered) over a scheduled work weekend, Sunday premium may be included. Overtime hours which might have been worked had the employee not been absent are not included.

### **2. Maximum of Regularly Scheduled Hours**

In any day on which an employee serves as a juror and also works, the hours spent on jury duty and at work should not exceed total regular scheduled hours.

## **I. Time Off for Legal Business**

Time off for legal business is not deducted from the Time Bank provided both the following criteria are met:

- It is not for personal interest.
- The employee is subpoenaed

The TACs timeclass for this entry is "Jury Duty" along with a comment noting the criteria.

### **3. Appearance in Court as a Witness at Company Request**

An employee appearing in court as a witness at the request of the company is paid as if at work. For Workers' Compensation cases, refer to 5B, Practice 2.24.

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## **1. Normal Work Hours**

An employee appearing during normal work hours is paid as if at work.

## **2. Outside of Scheduled Hours**

An employee appearing outside scheduled hours of work is paid as if at work, including overtime premiums as applicable.

Overtime is not credited to the nonexempt employee's overtime assignment rating. Overtime hours which the employee might have worked are not included.

## **3. Transportation from the Site**

Where logical and convenient, transportation from the site is provided by the company. If transportation is arranged after the employee has reported to the site for work, time in transit from the site to the hearing is counted as time worked.

## **4. Transportation from Home**

It may be more convenient for the company to provide transportation from the employee's home to the court. Transportation time in excess of the normal time required to travel to the work location is considered time worked.

If, under unusual circumstances, the employee is authorized by supervision to provide transportation to and from court, the time in transit from home to court is counted as time worked.

## **5. Meals**

Employee's meals, as required, are paid by the company on a per diem basis.

## **4. Time Off to Vote (Nonexempt and Selected Overtime Positions)**

WSRC allows employees who are registered voters necessary time to vote.

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Polls are usually open during hours which permit voting without loss of work time. If an employee's schedule makes it impractical to vote outside working hours at the employee's usual place of residence, time off with pay is granted for the time needed. The employee's usual place of residence is the location from which the employee usually commutes daily to work.

An employee who desires to vote at a location other than the employee's usual place of residence may be excused without pay.

In all cases, it is the employee's responsibility to request time off to vote and to substantiate the necessity for it. If deemed advisable, an employee may be required to establish the fact of registration and intent to vote.

1. If an employee is excused with pay, necessary time is determined by calculating the period required to reach the polls 30 minutes before the scheduled closing time.
2. When members of a carpool are located in different areas they are excused at the proper time to join their carpool. Provided all members of the carpool are registered voters and intend to vote, the allowance is worked out so that each member of the carpool receives normal hours of pay for the shift.
3. If an employee working day hours is held over and requests time off to vote, necessary time off during the regular work hours or at the beginning of the overtime shift are permitted and paid for at their regular rate (no premium included). The nonexempt employee's overtime assignment rating is credited with the actual overtime hours worked.
4. In no case may pay for time off to vote exceed 4 hours pay at the employee's regular rate.

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## **5. Adverse Weather and No Work Available (Nonexempt and Selected Overtime Positions)**

The WSRC President's Office makes the decision to activate the Adverse Weather Policy.

An employee who reports to work and is subsequently sent home because no work *is* available due to facility inoperability (fire: process flood; power failure: etc.) and/or adverse weather **is paid** for the remainder of the shift.

When an employee is given at least four hours' notice not to report to work due to facility inoperability or because of adverse weather conditions, the employee **is not paid**

When an employee does not report to work because of inclement weather conditions, the employee **is -not paid**. Supervision may allow an employee to take time off without pay, make-up time during the work week, or time bank time if deemed appropriate.

## **6. Death in Family**

### **A. Death in Immediate Family**

**NOTE:** The relationship of the deceased to the employee must be noted under the "Comments" section in TACS for nonexempt and selected overtime position employees.

1. Excused absence with pay is granted for up to 3 workdays in the event of a death in the employee's immediate family provided that the employee attends the funeral of the deceased. Immediate family is defined as employee's parents, grandparents, brothers, sisters, spouse, children, grandchildren, sons-in-law, daughters-in-law or parents-in-law. A step relationship such as step-parent, step brother, stepson, normally qualifies as immediate family. In some cases other - close relatives such as one who has substituted for an employee's

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parents or one permanently residing in the home of an employee may be considered as members of the immediate family. The workdays for such absence begin either with the day of death or with a scheduled workday following the day of death.

2. Excused absence with pay up to 3 workdays, under this policy is granted on the basis of the employee's need to be off work. This need is normally related to the death, funeral preparations, and the funeral itself. It is not intended to provide 3 days' paid absence in cases where less time is needed.

3. If excused absence is requested after the day of the funeral, pay is limited to two calendar days' immediately following the funeral. However, total absences cannot exceed three workdays. Specific justification (mourning, consoling other family members, handling estate matters, etc.) is not required for the employee's absence.

#### **B. Holiday During Absence**

When a holiday falls on an employee's scheduled workday it is counted as one of the three applicable workdays for death in the immediate family. The employee is granted pay at the regular rate for that day.

A holiday falling on the employee's scheduled day of rest is not counted as one of the three applicable workdays for death in the immediate family. The employee is granted holiday pay at the base rate.

#### **C. Death Occurring While On Timebank Time Off**

When a death occurs in the immediate family during an employee's scheduled timebank time off, the work schedule of the employee is considered to be the same as if the employee were at work. Scheduled timebank days within that payroll week are not rescheduled.

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**Example:** If a death occurs Wednesday in the immediate family of a straight-day employee using a 1-week timebank period and the funeral is on Sunday, Wednesday, Thursday and Friday of that period are considered timebank days. Monday and Tuesday of the following week are considered the 2 consecutive calendar days immediately following the funeral. The employee may be excused with pay on Monday and Tuesday following the funeral. In this case, Monday and Tuesday are the only days payable under death-in-family policy. Wednesday, Thursday and Friday remain as timebank days taken.

**Exception:** No allowance is granted if the employee does not attend the funeral, because of distance or any other reason.

#### **D. Record, Weekly Time Report (Nonexempt Employees)**

The date of death, date of funeral, and relation of the deceased to the employee must be noted in the Comment Section of TACS.

#### **7. Other Absences (Nonexempt and Selected Overtime Positions)**

##### **A. Absence Guidelines**

WSRC employees are expected to meet the following guidelines when requesting time off. The employee:

- has not been excessively or repeatedly absent such that the individual's performance or department's operating efficiency, was adversely affected
- when expected to handle a situation, has had insufficient time to make other arrangements
- would otherwise be adversely affected and the situation cannot reasonably be handled on non-work time
- has reported the absence(s) to supervision, or an appropriate alternate, in a timely manner

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When excused with pay for part of a shift, the nonexempt and selected overtime position employee is expected to work the remaining regularly scheduled hours. Non-scheduled timebank time or make-up time worked within the scheduled workweek may be used when approved by management. An employee may request permission for time off without pay if such absence does not adversely affect operating efficiency and the absence is reasonable to management.

Employees terminated by WSRC may be paid in lieu of notice.

*1. Time Off Due To Public Emergency*

If company-sanctioned, employees may be granted time off with pay to respond to a public emergency which prevents their attendance at work or the continuance of work during their shift schedule. A public emergency may include natural or man-made disasters. Authorization for time off with pay for such emergencies is made by the Vice President and Director of Human Resources with notice to the DOE.

*2. Time Off Without Pay*

When an employee requests permission to be absent for personal reasons, the employee may be excused without pay with management approval when all of the following conditions are met:

- such absence does not adversely affect the employee's job performance or the department's - operating efficiency
- employee's cause for absence is reasonable
- absence is 30 or less consecutive calendar days
- qualifying conditions listed in Subsection 7-A

*3. Educational Examinations, Meetings, etc.*

An employee may be excused without pay to:

- take educational examinations connected with off-the-job training

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- attend lectures or meetings not connected with the company even though they may be related to the employee's work.

The employee may be eligible for pay if attendance is required by the company.

#### 8. Absenteeism (Nonexempt and Selected Overtime Positions)

Efficient and effective operation depends upon absenteeism being held to a minimum. While management is required to use discretion in managing absenteeism, these guidelines provide a framework for evaluation of individual cases.

The following guidelines should be used when abuse is suspected:

1. Some absences are beyond the employee's control and should not be considered as absenteeism abuse. Examples of these absences are death in immediate family, jury duty, appearance in court, military duty, and some disabilities such as major illnesses and surgery. However, abuse of the situations should be reviewed with the division HR Manager.
2. Excessive use of time off without pay should be kept to a minimum.

NOTE: Use of timebank hours when scheduled is not considered when evaluating absenteeism.

If ~~abuse~~ of unscheduled absences is suspected, management discusses the absences with the employee and, if abuse continues, prepares a written Informative Contact. This focuses proper attention on the issue and establishes a written record. If abuse continues, the constructive disciplinary program is recommended (refer to 5B, 2.7). Management sets attendance standards and, with HR assistance determines when to place an

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**employee on constructive discipline.**

It is important that management ask the appropriate questions when determining reasons for absences and eligibility for pay.

**9. Pay in Lieu of Notice**

If WSRC terminates an individual's employment and the circumstances do not warrant giving two week's advanced notice of termination, the employee may receive one month's pay in lieu of notice if exempt and two week's pay in lieu of notice if nonexempt. Approval is by the HR lead and a Level-2 manager.

Pay in lieu of notice is not given to employees in cases of discharge or voluntary resignations. Records

Records generated as a result of implementing this procedure are processed in accordance with Procedure Manual IB, MRP 3.31, "Records Management". References

DOE 1324.5B, Records Management Program

Procedure Manual IB, MRP 3.31, "Records Management"

**Procedure Manual 5B. Human Resources Policies, Practices and Procedures Forms**

OSR 5-17 Reporting Absences (billfold card)

**Requirements Control System**

None

**Attachments**

None

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## **Procedure Manual 5B Human Resources Policies, Practices and Procedures**

### **Procedure 2.24 Disability Compensation**

Rev. 5 12/13/99

Purpose

Scope

Terms and Definitions

Responsibilities

Employees

Management

WSRC Medical

Occupational Safety and Health Technology (OS&HT)  
Department

Payroll Section

Safety and Health Operations Department

Practice

#### **1. Occupational Disability**

**A. Reporting, Classification, and Management**

**B. South Carolina Workers' Compensation Law**

**C. Methods of Payment**

**D. Benefits**

**E. Terminated for Lack of Work**

2. Effect of Occupational Disability On Other Company  
Plans and Policies

**A. Plans Not Applicable**

**B. Plans that Fully Apply**

**C. Plans That May Apply**

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3. Non-Occupational Illness or Injury

- A. Reporting
- B. Returning to Work
- C. Critical Health Conditions
- D. Pay

4. Timebank Review Process

Initiation of Review Process

5. Absence Related to Pregnancy

- A. Notification
- B. Beginning of Disability
- C. End of Disability and Return to Work
- D. Going Directly From Pregnancy Disability to Family/Medical Leave/Reduced Work Schedule
- E. Termination (Normally Resignation) After Disability
- F. Relationship to Other Plans

6. Medical Leave of Absence (LOA)

- A. General
- B. Eligibility
- C. Exclusion for Key Employees
- D. Intermittent or Reduced Schedule
- E. Notification
- F. Approvals
- G. Effect on Benefits and Timebank

Records

References

QSR Forms

Requirements Control System

Attachments

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DATE: 12/13/99

**5B, Human Resources Policies, Practices and Procedures**  
**Procedure Revision Summary**

- 1. Procedure and Revision #:** 2.24 Rev. 5
- 2. Procedure Title:** Disability Compensation
- 3. Effective Date:** 12/13/99
- 4. Procedure Changes**

Practice: Sub-section C, "Critical Health Conditions", Items 1c, d, e-revisions to critical health conditions,

- c) Medical treatment for life threatening conditions (Conditions wherein medical intervention is required to prevent imminent loss of life, limb, or vital organ.)
- d) Recurring medical condition wherein prompt/immediate medical intervention is required to prevent imminent loss of life, limb, or vital organ,
- e) Pregnancy - delivery and up to six weeks postpartum - complications of pregnancy that threaten the health of mother or child

**5. Training Requirements:**

As with any procedure revision, those employees affected by the procedure need to familiarize themselves with the changes. No additional training is required.

**Purpose**

This document provides guidance about Westinghouse Savannah River Company (WSRC) management and compensation practices for time not worked due to medical disability.

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## **Scope**

These practices apply to all full-service WSRC employees. Policies that apply specifically to professional or nonexempt employees are noted as such.

The following absences are excluded from the scope of this practice:

- part-time, student and limited-service employees, refer to Practice 2.4
- all other pay for unworked time, refer to Practice 2.12
- non-medical leaves of absence, refer to Practice 2.25
- timebank time off, refer to Practice 2.19

## **Terms and Definitions**

Definitions are in 4.3, "Glossary of Terms." Responsibilities Employees

Employees are responsible for

- reporting any injury or illness promptly to management
- following management directions in reporting to the nearest available WSRC Medical Station if injured or ill while at work
- following WSRC Medical directions with reference to treatment, examinations, modified work, etc.
- complying with any and all pregnancy-related work restrictions imposed by Medical, management and/or the Radiological Control Operations (RCO) department manager, if the employee declares a pregnancy
- clearing through WSRC Medical after all work-related disabilities before returning to the job site
- clearing through WSRC Medical before returning to work after non-occupational disabilities lasting longer than 24 working hours
- refunding the difference to the company if total benefits while out of work on workers' compensation are in excess of their normal earnings

## **Management**

Management is responsible for discussing absences due to disability with WSRC Medical

- promptly sending injured or ill employees to WSRC Medical
- completing, and forwarding to WSRC Medical, OSR 5-21, Report of Disability
- ensuring employees complete TACS records correctly accounting for all hours that correspond with their approved shift schedule, using the appropriate time class title as follows:
  - Nonoccupational Illness or Injury - "Vacation-Personal Time" or "Disability-Short-term"
  - Occupational Illness or Injury - "Disability-Worker's Comp"
- notifying OS&HT in case of injury or other serious incident
- investigating on-the-job injury/illness cases
- assisting in accident/injury investigations, as required
- maintaining regular contact with an injured employee pending return to work, and ascertaining recovery progress in all lost-time injuries
- requiring the returning employee to clear through WSRC Medical before returning to work after all work related disabilities and after non-occupational disabilities lasting longer than 24 working hours
- assisting both WSRC Medical and the employee in the development of restricted work and other adjustments

**NOTE:** If an auxiliary timecard is used, the symbol "WC" should be used to denote a work-related injury or illness. An explanation can be added to the "Remarks" Section if necessary.

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**WSRC Medical is responsible for**

- determining if employees' disabilities meet the Critical Health Condition criteria
- administering medical treatment, as required, and making all arrangements for additional care, as needed, for occupational disabilities
- assisting line management and OS&HT in determining if a disability is work-related
- completing the SRS Injury/Illness Report (OSR 2-24) for any injury/illness, or non-occupational injuries that result in lost time of one day or more, claimed by the employee to be work-related or which is suspected by the physician to be work-related, as well as for off-the-job injuries/illnesses which require work restrictions or serious off-the job injuries/illnesses, and forwarding it to Occupational Safety and Health Technology (OS&HT) Department
- determining if loss of time from work is necessary due to occupational disability
- immediately notifying OS&HT when an employee starts losing time from work due to, and when the employee returns to work after, an occupational illness/injury
- determining the extent of loss of function of member
- maintaining necessary contact with disabled employees for examinations, etc. assisting the employee's doctor in selecting a return-to-work date
- helping line management set up modified work, if required
- clearing the returning employee for work
- conducting follow-up physical examinations and treatment, as required

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Management and WSRC Medical have additional responsibilities when a nonexempt employee is not being carried on the workers' compensation injury roll and as a result of a site injury or contamination is:

- held in WSRC Medical after the end of the employee's shift
- required to report to WSRC Medical outside regular scheduled work hours

#### **Occupational Safety and Health Technology (OS&HT) Department**

OS&HT Department is responsible for

- reporting the results of on-the-job injury/illness investigations
- classifying and tabulating injuries/illnesses; an injury must be either occupational or nonoccupational, but never both
- referring questionable cases to OS&HT management for a final classification decision
- notifying the insurance carrier, Payroll Section and Pensions and Records Section when an employee starts losing time from and returns to work, if the disability results in lost time, including the amount of workers' compensation benefits the employee is eligible to receive

#### **Payroll Section**

Payroll Section is responsible for

- stopping an employee's regular payroll check when notified by OS&HT that the person has lost more than the 7-day waiting period under South Carolina Workers' Compensation

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monitoring employee pay to ensure that Supplemental Workers' Compensation Benefits are issued appropriately

- deducting government-mandated court orders (i.e., child support, liens, levies, etc.) from supplemental workers' compensation benefits
- reinstating an employee's regular payroll check when notified by OS&HT that the individual has returned to work
- ensuring that the proper refund has been received from the employee by the company when notified by OS&HT that the employee was issued total benefits in excess of employee's normal earnings
- notifies the employee that the regular payroll check will be reduced by the amount of the workers' compensation payment

### **Safety and Health Operations Department**

This department is responsible for determining a declared pregnant worker's dose after conception and reporting the ongoing dose as it accrues if monitoring is performed.

### **Practice**

The practices are addressed in 5 subsections:

1. Occupational Disability
2. Effect of Occupational Disability On Other Company Plans and Policies
3. Non-Occupational Illness or Injury
4. Pregnancy-related Disability Program
5. Medical Leaves of Absence

### **1. Occupational Disability**

#### **A. Reporting, Classification, and Management**

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Employees missing time due to any occupationally-related injury or illness continue to be required to be evaluated by WSRC Medical before leaving the job site or returning to work. Initial reporting of occupationally-related injury or illness must occur at the time of injury/illness.

1. The employee (or designee, if incapacitated)

- reports any injury or illness promptly to management
- follows management directions in reporting to the nearest available WSRC Medical Station if injured or ill while at work
- participates actively in his/her medical and safety evaluation including the investigation
- follows WSRC Medical directions with reference to treatment, examinations, modified work, etc.

2. Management

- promptly sends injured or ill employees to WSRC Medical
- notifies OS&HT about any on-the-job illness/injury or other serious incident
- completes OSR 5-21, Report of Disability, when an employee's absence due to occupational disability exceeds 24 working hours and distributes as indicated on the form
- investigates on-the-job injury/illness cases
- assists in accident/injury investigations, as required
- maintains necessary records, i.e., timecards, accounting of all hours that correspond with employee's approved shift schedule and designated code using the symbol "WC" to denote a work-related injury or illness. An explanation can be added to the "Remarks" section if necessary

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maintains regular contact with an injured employee pending return to work, and ascertains recovery progress in all time-losing injuries

- ensures the returning employee clears through WSRC Medical before returning to work after all work-related disabilities
- assists both WSRC Medical and the employee in developing restricted work programs and other adjustments

### 3. WSRC Medical

- assists line management and OS&HT, if a disability is work-related
- administers medical treatment, as required, and makes all arrangements for additional care for occupational injury/illness cases
- determines if loss of time from work is necessary due to occupational disability
- completes the SRS Injury/Illness Report (OSR 2-24) for any injury/illness claimed by the employee to be work-related or which is suspected by the physician to be work-related and forwards it to OS&HT
- immediately, verbally, notifies OS&HT when an employee starts losing time from work due to, and when the employee returns to work after, an occupational illness/injury
- determines the extent of loss of function of member
- maintains necessary contact with disabled employees for examinations, etc.
- assists the employee's doctor in selecting a return-to-work date

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- helps line management set up modified work, if required
- clears the returning employee for work
- conducts follow-up physical examinations and treatment, as required

#### 4. OS&HT

- conducts on-the-job injury/illness investigations
- classifies and tabulates injuries/illnesses; an injury must be either occupational or nonoccupational, but never both
- refers questionable cases to OS&HT management for a final decision
- notifies the insurance carrier, Payroll Section and Pensions and Records Section when an employee starts losing time from and returns to work, if the disability results in lost time, including the amount of workers' compensation benefits the employee is eligible to receive

#### 5. Payroll Section

- stops an employee's regular payroll check when notified by OS&HT that the person has lost more than the 7-day waiting period under South Carolina Workers' Compensation
- monitors employee pay to ensure that Supplemental Workers' Compensation Benefits are issued appropriately
- deducts government-mandated court orders (i.e., child support, liens, levies, etc.) from supplemental workers' compensation benefits
- reinstates an employee's regular payroll check when notified by OS&HT that the individual has returned to work

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- ensures that the proper refund has been received from the employee by the company when notified by OS&HT that the employee was issued total benefits in excess of employee's normal earnings
- notifies the employee that the regular payroll check will be reduced by the amount of the workers' compensation payment

## **B. South Carolina Workers' Compensation Law**

This law requires an employer to provide an employee with medical care and income when disabled on the job. It also provides the employee's dependents with income in case of death resulting from such disability.

### **1. Provisions of the law:**

- the employer must supply medical, surgical, hospital and other treatment, including medical and surgical supplies as reasonably required
- A schedule of payments, adjusted periodically by legal action, is maintained. This schedule provides compensation amounts to be paid for total disability, partial disability, loss of function, disfigurement, or death.

### **2. Right of Appeal**

An award of the South Carolina Worker's Compensation Commission is conclusive and binding to all questions of fact. However, if either the employer or the employee appeals the decision to a court of common pleas within 30 days from the date of the award, the appeal acts as a "stay of compensation" for 30 days. If the appeal is not settled within that period, the employer or insurance carrier makes payment on the award until the questions at issue have been fully settled.

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### 3. Computation of Pay for Witnesses

An employee requested by the company or its insurance carrier to appear as a witness before the South Carolina Workers' Compensation Commission is paid as follows:

- an employee appearing during normal work hours is paid as if at work
- an employee appearing outside scheduled hours of work is paid as if at work, including overtime premiums as applicable. Such overtime is not credited to the nonexempt employee's overtime assignment rating. Overtime hours which might have been worked are not included.
- time spent appearing is considered as time-worked in computing hours over 40 in the workweek, and in determining the sixth and seventh day worked in the workweek

### 4. Transportation to/from Hearings

Where logical and convenient, transportation is provided by the company. If transportation is arranged after the employee has reported at the site for work, time in transit from the site to the hearing is counted as time-worked.

If it is more convenient for the company to provide transportation from the employee's home to the court, such transportation time, over and beyond the normal time required to travel from home and report for work, is considered as time worked.

If the employee is authorized by supervision to provide transportation to and from court, the employee is paid for such travel at the prevailing authorized rate by the insurance carrier.

### 5. Meals

Under unusual circumstances, meals reasonably included within the period of time during which an employee is appearing as a witness are furnished by the insurance carrier.

## 6. Appearance for Plaintiff

A nonexempt employee appearing before the South Carolina Workers' Compensation Commission at the request of the plaintiff receives no pay from the company or its insurance carrier for any time, travel, meals, or other expenses.

## C. Methods of Payment

### 1. Legal Liability Insurance Carrier

The Wausau Insurance Companies are retained by the company to discharge its legal liability with regard to Workers' Compensation. The insurance carrier

- conducts a supplementary investigation, as necessary
- determines an employee's eligibility for workers' compensation benefits based on known facts and the law
- makes all workers' compensation payments, such as weekly benefits, hospital, medical and surgical expense, lump sum settlements, etc.

If an employee disagrees with the insurance carrier's opinion regarding Workers' Compensation eligibility, an appeal may be made to the South Carolina Workers' Compensation Commission for final decision. (See 1-B.2, above)

Workers' Compensation is not paid for the first seven calendar days of disability unless the employee is still disabled on the 14<sup>th</sup> calendar day following the injury. If this is the case, compensation is paid at this time for the seven-day waiting period. As a result, the workers' compensation benefit for the third week of disability is supplemented by the compensation for the first week of disability.

Where it is clear that the injury will involve temporary total disability for more than 14 calendar days, workers' compensation may be paid before the completion of the seven-calendar-day waiting period.

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## **D. Benefits**

An employee absent from work due to occupational disability receives both the workers' compensation specified by law and such supplemental benefits as are applicable under the WSRC Special Benefits Plan.

1. The WSRC Special Benefits Plan establishes a basis for granting special benefits to employees who incur an occupational injury or illness. This plan also applies to the employee's dependents when employees lose their lives due to occupational injury or illness.

Benefits awarded to employees under this plan constitute pay for time not worked.

### **2. Supplemental Benefits Under the Special Benefits Plan**

- If workers' compensation is less than the employee's pay computed on the basis of the employee's regular rate, the difference is made up by supplemental benefits.
- Supplemental benefits start after 24 scheduled working hours following the work related injury or illness unless such injury or illness is the result of a Critical Health Condition and then benefits will begin immediately. Benefits are paid without the seven-day waiting period required for workers' compensation. Payment of supplemental benefits continues until the employee returns to work or for six months, whichever is shorter.
- If workers' compensation for any week is more than the employee's pay computed on the basis of the employee's regular rate, the difference is deducted from supplemental benefits for the following week.
- An employee receiving supplemental benefits receives any pay increase (general or progression) in base rate for which the employee becomes eligible and is qualified.

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## **E. Terminated for Lack of Work**

Employees disabled because of occupational illness or injury are not exempt from a reduction in force.

## **2. Effect of Occupational Disability On Other Company Plans and Policies**

### **A. Plans Not Applicable**

The Short Term Disability Plan applies only to nonoccupational disability and therefore is not involved with occupational disability.

### **B. Plans that Fully Apply**

The following plans and policies continue in full force during occupational disability with coordination of any workers' compensation benefits:

- Pension
- Dental Assistance Plan
- Noncontributory Life Insurance Plan
- Savings and Investment Plan
- Contributory Insurance Plans
- Flexible Spending Plan
- Medical Assistance Plan
- Employee Stock Purchase Plan
- US Savings Bond Purchase Plan
- Vision Plan

The disabled employee is eligible for medical, dental, and vision insurance benefits for conditions not related to occupational disability. Family coverage continues, if applicable.

Deductions and premium payments applicable for the above plans and policies are continued. Deductions are made from Supplemental Workers' Compensation benefits received under the ~~Special~~ Benefits Plan while the employee is out on workers' compensation.

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## 1. Pension

Time carried on the workers' compensation injury roll is credited as eligible service in computing eligibility for, and amount of, pension.

An employee may be eligible for Incapability Retirement, provided the employee has 15 or more years of eligible service.

## C. Plans That May Apply

The following plans and policies may be involved when dealing with an occupational disability.

### 1. Timebank Plan

When an employee is occupationally disabled after timebank time has been scheduled, the timebank may be rescheduled, as necessary, in accordance with the provisions of the Timebank Plan.

### 2. Holidays

If a holiday occurs while an employee is receiving compensation under the Special Benefits Plan and/or workers' compensation, the employee:

- is paid a base-rate holiday allowance for a holiday that occurs on the employee's scheduled day of rest
- is not paid a holiday allowance for a holiday that occurs on the employee's regular scheduled workday

### 3. Non-Occupational Illness or Injury

#### A. Reporting

The employee or designee, if employee is too incapacitated to report personally, reports the illness/injury to supervision.

#### Management

- documents the report, including employee's condition, physician, estimated time away from the job site and what caused injury, if appropriate
- requests approval from Medical to pay disability benefits

- ensures appropriate entries are made in TACS, i.e. complete TACS record correctly for accounting of all hours that correspond with employee's approved shift schedule, using the appropriate time class title "Vacation-Personal Time" or "Disability-Short-Term"
- completes OSR 5-21, Report of Disability, when an employee's absence due to non-occupational disability exceeds 24 working hours and distributes as indicated on the form
- notifies OS&HT of off-the-job injuries where employee cannot report to the job site or WSRC Medical
- discusses absences due to disability with WSRC Medical, as necessary

3. OS&HT investigates, classifies, tabulates, and reports off-the-job injuries in cooperation with WSRC Medical.

4. WSRC Medical works with employee, supervision and OS&HT, as appropriate, to provide for optimal employee care and meet the business need to have the employee at work.

## **B. Returning to Work**

An employee who returns after a disability of any length and is assigned to a limited work schedule, temporary assignment, or restricted work is required to consult with Medical prior to beginning work. This includes employees who may be medically impaired, on special medication, etc. Management should ask employees to provide a Return to Work Slip when required to clear through Medical. Refer to Practice 2.18, "Employee Plans and Benefits," medical limitations section.

Employees are required to clear through Medical if hospitalized, if they have had an invasive procedure (i.e. surgery, myelogram, catheterization, endoscopy, etc.), or if they have been absent due to an injury or illness for more than

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24 working hours. Management is encouraged to take an active role in monitoring such employees and assisting Medical as appropriate.

Employees returning to work from a non-occupational injury with lost time of 24 working hours or more are required to clear through Medical.

Except as detailed above, employees returning to work from non-occupational illnesses of less than 24 working hours are not required to report through Medical and may return directly to the work site.

Employees disabled for longer than 24 working hours must be released by Medical before returning to a regular work schedule.

### **C. Critical Health Conditions**

An employee who has and is being treated for a Critical Health Condition will not be required to use hours from his or her timebank prior to receiving Short-Term Disability.

1. Critical Health Conditions are defined as:

a) Hospital admission (overnight stay)\*

\*Surgery and medical treatments not covered by the WSRC Medical Plan (cosmetic surgery, for example) do not constitute Critical Health Conditions.

b) Outpatient surgery requiring general, spinal or regional anesthesia \* \*\*

\*\* General anesthesia results in a loss of consciousness; spinal anesthesia is injection of an anesthetic into the spinal cord; regional anesthesia is a block to a region of the body, such as an arm or leg. A local, or topical, anesthetic is not included.

c) Medical treatment for life threatening conditions (A condition wherein medical intervention is required to prevent imminent loss of life, limb, or vital organ.)

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d) Recurring medical condition wherein prompt/immediate medical intervention is required to prevent imminent loss of life, limb, or vital organ.

e) **Pregnancy**

Delivery and up to six weeks postpartum.

Complications of pregnancy that threaten the health of mother or unborn child.

2. Critical Health Conditions may require recurring treatment under the supervision of a health care provider (for example, chemotherapy, dialysis or post-surgical physical therapy). With prior authorization from WSRC Medical, such recurring treatment may also be covered by Short-Term Disability and not subject to timebank hours.

**D. Pay**

An employee on short-term disability is paid their normal monthly base pay for up to six months. WSRC Medical approves disability pay and may deny pay if the employee is absent for more than 24 working hours and has not been under a licensed physician's care.

When absence due to nonoccupational illness or injury occurs during a nonexempt employee's pay progression period, the effective starting date of that period is maintained and the pay rate increase is given as scheduled if the employee performs regular work for 50% or more of that period. If a nonexempt employee works less than 50% of the pay progression period, the pay rate increase is delayed until the employee has performed regular work for time totaling 50% of that progression period. Nonexempt employees must perform regular work at least 50% of their progression period in order to be granted a progression raise as scheduled.

Pregnancy-related disability is addressed in subsection 5.

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#### **4. Timebank Review Process**

Critical Health Conditions, as defined in the Timebank Policy, do not require use of 24 hours from Timebank prior to payment of Short-Term Disability. Immediate payment of Short-Term Disability may begin when a Critical Health Condition occurs and payment is authorized by the Site Medical Department.

##### **Initiation of Review Process**

If an employee believes his/her specific condition qualifies as a Critical Health Condition but Site Medical Department does not concur, the following review process is available.

1) Employee completes a Timebank Critical Health Condition Review Form (OSR 5-350) detailing their specific condition and describing why they believe use of Timebank hours should not be required. Form must be submitted to Site Medical within ten (10) working days following return to work from the disability.

2) The Site Medical Department reviews employee's statement and provides written response within ten (10) working days. As a result of the review:

- Medical may Approve immediate use of Short-Term Disability,
- Medical may disapprove. Employee must utilize 24 hours from timebank prior to receiving Short-Term Disability, OR
- Medical may disapprove. All absences due to this condition must be taken from timebank.

Medical notes determination on OSR 5-350, returns form to employee, and coordinates payroll changes, if required.

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3. If Medical Department disapproves, employee may request that Human Resources review their specific circumstances with the Deputy Division Manager. When the Deputy Manager agrees that the use of timebank hours is consistent with policy, the Timebank Critical Health Review Board will review to ensure consistency. If the Deputy Division Manager believes there are exceptional considerations that may warrant further Consideration, the review Form will be forwarded to the Timebank Critical Health Condition Review Board.

4. The Timebank Critical Health Condition Review Board meets at a scheduled time each month. The Board ensures consistency in authorizations and may recommend policy changes when appropriate. The Board consists of an HR Manager, Division Deputy General Manager, and Medical Representative who are appointed for a one year term. The employee and his/hersupervisor or HR representative is invited and may present information regarding the request to the board.

5. After evaluating an individual request, the Timebank Review Board may:

- Determine use of Timebank hours is not required based on extenuating circumstance and intent of policy.
- Determine use of Timebank hours is appropriate and within policy.

6. Denial of benefits under any of the WSRC/BSRI Employee Benefits Plans (including short-term disability) can be appealed to the plan administrator ,730-1B. Detailed information regarding the appeal process is contained in the General Information section of the WSRC/BSRI Benefits Handbook.

##### 5. Absence Related to Pregnancy

Disability due to pregnancy is treated like any other disability. Any other pregnancy-related absence is treated as an absence for personal reasons.

See also 5B, 2.25, "Leaves of Absence."

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#### A. Notification

1. When pregnancy becomes known, the employee: notifies her management, in writing

- reports to WSRC Medical for recording of pertinent data and determination of anticipated delivery date
- continues to advise WSRC Medical of any significant changes in condition as her pregnancy progresses
- decides if she will declare her pregnancy for the purpose of protecting her unborn child from the potential for harmful effects which might be associated with exposure to ionizing radiation
- is responsible for complying with any and all work restrictions related to pregnancy imposed by her management, Medical, and RCO, should she declare pregnancy
- is allowed to withdraw her declaration of pregnancy at any time, without explanation or justification, thus terminating any restrictions

2. When an employee provides initial notification of pregnancy, management:

- ensures employee promptly reports to WSRC Medical
- issues Report of Disability at beginning of pregnancy-related absence
- issues Change of Status forms at the beginning and end of personal leave related to pregnancy (see Practice 2.25)
- conducts interview with pregnant employee emphasizing the need for close communication with management, her personal physician, and WSRC Medical through the pregnancy and after delivery

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conducts an interview with workers declaring pregnancy to protect an unborn child from the potential for harmful effects which might be associated with exposure to ionizing radiation, describing the option for provision of a mutually agreeable

assignment, without loss of pay or promotional opportunity, such that further occupational radiation exposure is unlikely

- reviews WSRC 5Q, Chapter 2, Article 215, "Embryo/Fetus Dose Limits," and Article 216, "Special Control Levels," for declared-pregnant workers assigned to locations where exposure to penetrating radiation or radio nuclide intakes are likely to occur
- completes Part A of form OSR 4-394, "Radiation Declaration/Withdrawal Record for Declared Pregnant Workers," and
  - arranges for a meeting with the facility RCO representative
  - discusses any special control levels and monitoring which may be implemented for the remainder of the pregnancy if the worker chooses to continue to do radiological work
  - forwards the completed OSR 4-394 to HPT Records Group, 735-A
  - keeps a copy of the completed OSR 4-394 in the employee's personnel file

### **3. Facility Radiological Control Operations (RCO)**

Upon notification of a declared pregnancy (Section 1 A), RCO in the employee's local work location:

- reviews WSRC 5Q, Article 215, "Embryo/Fetus Dose Limits," and Article 216, "Special Control Levels"

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reviews procedure 5Q1.2-217, "Use of External Dosimetry," Section 5.4.3, "Monitoring Unborn Children (Pregnant Females)"

- prepares, in coordination with the employee's management, OSR 4-394, "Radiation Exposure Declaration/Withdrawal for Declared Pregnant Workers" to document special control levels to be implemented during the remainder of the pregnancy. Management forwards the completed OSR 4-394, to Employee Exposure Records, 735-A, after the interview is held with the employee.
- determines a declared-pregnant worker's dose after conception and reports the ongoing dose as it accrues if monitoring is performed. Monitoring is not required or performed if the worker is assigned a job that does not require her to perform radiological work.

## **B. Beginning of Disability**

WSRC Medical determines beginning-of-disability date after consultation with the employee and, if necessary, with the personal physician. Determination is on a strictly individual basis and may not be the same for each employee. A Report of Disability, OSR 5-21, is prepared showing the disability absence beginning with the first hour employee is to receive disability pay.

The beginning date of disability is not normally changed, neither advanced nor postponed, unless there is an unusual delay in delivery.

If the estimated delivery date changes while the employee is on Leave of Absence (LOA) for personal reasons, this normally changes (advances or postpones) the beginning-of-disability date, as determined by WSRC Medical.

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### **C. End of Disability and Return to Work**

The employee's end-of-disability date is no later than 6 weeks from the date of delivery unless specific complications necessitate a longer absence. WSRC Medical should be notified immediately so physicians can determine the employee's end-of-disability date, after consultation with the employee and, if necessary, with her personal physician. The employee must schedule her doctor's appointment before the return-to-work date.

Management should contact WSRC Medical no later than 4 weeks after delivery to ensure that the Report of Disability has been received and to verify the return-to-work date.

The employee must report to work through her Area Medical Station. Reporting time, for nonexempt, is paid as time worked unless she is sent home, in which case the time continues to be reported as "P" until she is released by Medical.

### **D. Going Directly From Pregnancy Disability to Family/Medical Leave/Reduced Work Schedule**

After WSRC Medical determines the end-of-disability date and employee is cleared through Medical, an employee may request to work a reduced schedule or take up to a total of 12 consecutive weeks off without pay and service under the Family and Medical Leave Act (FMLA). The following guidelines apply:

- The work schedule must be mutually agreeable to employee and the Level 2 manager and approved prior to the first week. Prior to the start of the schedule, the manager notifies HR Compensation in writing of the employee's, work schedule and number of hours to be worked .Attach this schedule to the Change of Status, OSR 5-8.

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A reduced work schedule may be approved beginning with the return-to-work date after disability. The reduced work schedule becomes the employee's regular work hours. The time off can be taken as 12 consecutive workweeks or by working a reduced schedule to the equivalent in hours of 12 workweeks (unpaid) over a 12 month period. Refer to Practice 2.25, "Leaves of Absence."

- Excused time with pay for site plans (timebank time off, disability, etc.) is paid according to the employee's work schedule. These paid excused absences are considered as time-worked for accruing the minimum hours per week.
- For nonexempt, selected overtime position, or exempt employees on a full or intermittent family LOA, the managers or supervisors must enter the hours of the employee's absence each week in TACS using the time class title "Family Medical Leave-No Pay." In the event that the absence for an employee is not recorded in TACS for a given week:
  - Nonexempt or Selected Overtime Position Employee
    - An auxiliary timecard should be completed using the code "FM" to indicate time not worked due to Family LOA and submitted to the Payroll Section Exempt Employee
  - An e-mail should be sent to the Payroll Section requesting that the employee's absence due to Family LOA be recorded against the employee's FML entitlement in TACS. The e-mail should include the employee's name, social security number, and the dates and hours that need to be recorded to the FML time class for the employee.

- Service credit is not adjusted when the employee is working a reduced schedule. Service credit is adjusted for time off in excess of 30 days.

#### **E. Termination (Normally Resignation) After Disability**

When an employee terminates after disability for pregnancy, Human Resources and WSRC Medical should be notified promptly. Termination is the same as for any other voluntary separation and the same requirements and processes apply.

#### **F. Relationship to Other Plans**

For employees on paid disability for pregnancy, all benefits continue to apply. Normal deductions continue to be made for Contributory Group Life Insurance plans, Savings and Investment Plan, Health Choice Benefits, Flexible Spending, etc. However, for employees who qualify for the FMLA prior to or after the disability period, the benefit treatment is different since such leave is without pay, service and seniority credit if it exceeds 30 calendar days.

The employee should give as much notice as possible of her intent to take FMLA leave. Notification to supervision must be at least 1 week prior to beginning the leave if pay and/or benefits are to be ensured without interruption.

When notified, management contacts Benefits Administration at least one week before leave to arrange for remittance of monthly premiums for continued medical, dental, vision and contributory life insurance benefits. Also, for this purpose, leaves for exempt employees are submitted through the Level 2 manager's office as far in advance as possible so the employee can make arrangements for direct payments. Effects on benefit plans are summarized in Practice 2.25, Attachment B.

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## 6. Medical Leave of Absence (LOA)

A Medical LOA is granted only in cases in which:

- it may reasonably be expected that the employee will return to work after the leave
- Medical has verified with the employee's personal physician that the condition qualifies for LOA

Management must ensure that each employee going on LOA understands thoroughly the effect it has on WSRC pay and benefits, as noted in this section.

An official LOA is required when an employee is absent from work for more than 30 consecutive calendar days, unless the absence is because of:

- timebank, in conjunction with unpaid time off in accordance with the Timebank Plan policy
- occupational disability and employee is carried on the workers' compensation injury roll
- nonoccupational disability and employee is carried on the short term disability roll

If an employee does not return to work on the first scheduled workday after being dropped from the Short Term Disability Roll, a LOA covering the period of absence not covered by disability is required if the entire period exceeds 30 consecutive calendar days. Time spent on the disability roll during the period is written on the request form.

A leave is not necessary if the employee's disability was terminated on medical evidence on or before the 30<sup>th</sup> day of absence and the employee did not return to work within the 30-day period solely because the employee was not scheduled to work.

Consecutive calendar days are considered to begin on the first full workday absent for excused absence with pay.

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## **A. General**

Family Leave is addressed in 5B, Practice 2.25, which addresses family leave to care for spouse, child or parent who has a serious health condition.

An eligible employee is entitled to a total of 12 workweeks of unpaid medical leave in a 12-month period for:

- child care after its birth (entitlement for such leave expires one year after the date of birth)
- personal serious health condition that prevents the employee from performing the regular duties of an assignment

The time off can be 12 consecutive workweeks or working a reduced schedule to the equivalent in hours of 12 workweeks (unpaid) over a 12 month period. For example, if an employee's normal workweek is 40 hours, that individual is able to take up to 480 hours of medical leave during a 12 month period.

## **B. Eligibility**

All WSRC full service employees (full-time and part-time) who have been employed for at least one year and have worked at least 1250 hours during the previous 12 month period are eligible for Family and/or Medical LOA.

Employees cannot be denied leaves under the Family and/or Medical Leave Act for which they qualify because of poor attendance or performance.

## **C. Exclusion for Key Employees**

Although no employee may be denied LOA, when approved by WSRC HR management, key employees (highest paid ten percent of all WSRC employees) may be excluded from eligibility for restoration of position. For further guidance on this process, contact HR.

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#### **D. Intermittent or Reduced Schedule**

If an employee qualifies for medical leave, an intermittent leave may be taken in separate periods of time due to a single illness or injury rather than one continuous period of time. Periods of time from one hour to several days may be included. Reduced leave means leave schedules that reduce the usual number of hours per workweek or hours per workday.

Leave for the employee's serious health condition may be taken intermittently when medically necessary (refer 5B, 2.25, "Leaves of Absence" for intermittent family leave).

Only the time actually taken as FMLA leave may be charged against the employee's entitlement (e.g., one day of a five-day workweek equals 0.2 FMLA week).

#### **E. Notification**

If the necessity for the leave is foreseeable based on an expected birth or planned medical treatment, the employee provides management with at least 30 days notice before the date that the leave is to begin. If 30 days notice is not practicable, such as because of lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.

When an employee provides notice of the need for medical LOA, management notifies the employee, detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. This notification is the same as for Family Leave and is described in Practice 2.25.

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## **F. Approvals**

Qualified medical leave requests are authorized by a Level 2 manager and the division HR lead in coordination with WSRC Medical. OSR 5-8, Change of Status, must be initiated for employees who request continuous leave or reduced work schedule for medical leave. The Change of Status reflects time taken using the code "FM."

## **G. Effect on Benefits and Timebank**

Medical leave has the same effect on employee pay and benefits as family leave under the FMLA. See Practice 2.25 for details.

## **Records**

Records generated as a result of implementing these practices are managed in accordance with referenced site requirements

In addition, the FMLA requires that records be kept of leaves requested and taken under the Act. Such records must be kept for no less than three years and made available for inspection, copying and transcription by representatives of the Department of Labor. Record items required under the FMLA are detailed in Practice 2.25.

## **References**

- DOE 1324.5B, Records Management Program
- Family and Medical Leave Act
- Procedure Manual 1B, MRP 3.31, "Records Management"
- Procedure Manual 5B, Human Resources Policies, Practices and Procedures
- Procedure Manual 5Q, Radiological Control Manual
- Procedure Manual 8Q, Employee Safety Manual

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- OSR Forms
- OSR 2-24 SRS Injury Illness Report
- OSR 4-394 Radiation Declaration/Withdrawal Record for Declared Pregnant Workers
- OSR 5-8 Change of Status - Nonexempt Employees
- OSR 5-21 Report of Disability
- OSR 5-350 Timebank Critical Health Condition Review Form

### **Requirements Control System**

#### **1. Family and Medical Leave Act**

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## **WSRC 5B Human Resources Policies, Practices and Procedures**

### **Practice 3-3, Pay for Time Worked**

Rev. 7 09/01/01

This revision was previously numbered 2.11. The revision consists of editorial changes and changes that required a section to be removed completely; therefore, no rev. bars are used.

- Purpose
- Scope
- Terms and Definitions
- Responsibilities
  - Medical
  - Managers
- Procedure
  - Non-exempt General Data
  - Basic Method of Compensation
    - Rate Structure (Non-exempt)
    - Pay Based on Job Assignment
    - Pay for Time Worked on Other than Regular Assignment (Non-exempt)
    - Shift Differential (Exempts, Non-exempts, and SOP)
    - Pay Based on Position Grade Guidelines for SOPs
  - Time Not Directly on the Job (Non-exempts and Selected Overtime Positions)
- Meetings

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- Sign-up and Orientation of New Employee
- Required Clothes Change
- Wash-up Time
- Shift Turnover Relief for Exempts, Non-exempts, and SOPs
- Pay for Time Spent in WSRC Medical (Non-exempts and SOPs)
- Decontamination Wash-up
- Make-Up Time (Non-Exempt/Selected Overtime Positions [SOPD
- Conditions
- Schedule
- Administration with Other WSRC Programs
- Time Record
- Records
- References
- Forms
- Requirements Control System
- Attachments

**Date: 9-1-01**

**5B Human Resources Policies, Practices & Procedures**  
**Procedure Revision Summary**

1. **Procedure and Revision #:** 3-3- Rev 7
2. **Procedure Title:** Pay for Time Worked
3. **Effective Date:** 9/1/01

**4. Procedure Changes**

This revision was previously numbered 2.11.

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### **Procedure**

- Basic Method of Compensation - revised detail pay practice as communicated
- Time Not Directly on the Job - removed all meal time
- allowance information. A new procedure 3-9, "Meals" was created to cover this information.
- Make-Up Time (Nonexempt/Selected Overtime Positions -
- This section was removed from Practice 2.1 and added to this
- procedure

### **5. Training Requirements:**

- Supervision and employees should become familiar with the new/revised requirements. No additional training is required.

### **Purpose**

This procedure establishes practices and guidelines for paying Westinghouse Savannah River Company (WSRC) personnel for time worked.

### **Scope**

This procedure applies to all full-service WSRC employees. Items that apply specifically to exempt, non-exempt, or selected overtime position (SOP) employees are noted as such.

### **Terms and Definitions**

Terms and definitions used are in item 4.3, "Glossary of Terms."

### **Responsibilities**

### **Medical**

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**Medical is responsible for:**

- completing Treatment Records (OSR 2-3) for employees reporting for medical care and managing it as part of the individual's medical record
- completing Medical Attention form (OSR 2-1) and appropriately distributing copies, for treated employees

## **Managers**

Managers are responsible for paying employees in accordance with the requirements of this procedure.

## **Procedure**

### **Non-exempt General Data**

Non-exempt employee pay is based on weekly entries recorded in TACS (Time and Attendance Collection System). Non-exempt employee pay is by check, or direct deposit, and mailed to the employee's address on record no later than Wednesday following the week in which the pay is earned. Work time calculation and compensation is in increments of 0.1 hour (six minutes). Any employee who works for any part of a six-minute period is paid for the entire six-minute period as time worked.

### **Basic Method of Compensation**

#### **Rate Structure (Non-exempt)**

The non-exempt rate structure is a series of pay grades, each having a lateral range. The base rate for each job is established by considering requirements for education and experience, responsibility, effort, and working conditions.

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## **Pay Based on Job Assignment**

A non-exempt employee is paid at a rate within the range of rates prescribed for the job classification. Exempt and SOP employees are paid within a rate range reflecting their performance and job responsibilities.

### **Pay for Time Worked on Other than Regular Assignment (Non-exempt)**

Temporary Assignment in Same Pay Grade - a non-exempt employee is continued at the same rate whenever a temporary job assignment is in the same or lower pay grade.

Temporary Assignment in Higher Pay Grade (detailed/temporary promotion) - temporary promotions require division HR approval.

Selection for Detailing/Temporary Promotion - in selecting a non-exempt employee for detail/temporary promotion to a higher pay grade, the manager must first declare a vacancy (existing or new position). They then contact the personnel coordinator to determine which employee within the work group is the most senior, qualified for the detail position and next in line for promotion to the higher-rated job. Non-exempt personnel cannot be detailed to exempt positions nor can they be detailed from unit to unit.

Restrictions - a non-exempt employee normally is not detailed to a higher pay grade for more than 28 days. If assigned to a higher pay grade for a longer period (normally not in excess of 60 days), the employee is temporarily promoted. Note this on the Change of Status form (OSR 5-8).

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Recording Detailing and Temporary Promotion - detailing rate changes are noted on the timecard by circling the hours to be paid at detail rate and identifying pay grade in the remarks section. Temporary promotions require the submission of an OSR 5-8. The name of personnel coordinator who approved the employee must be written in the remarks section. If verification is necessary, Payroll Section contacts the personnel coordinator identified on the Timecard.

A non-exempt employee is detailed or temporarily promoted to a higher pay grade when:

- an approved vacancy for the higher rated job exists and business conditions warrant a detail or temporary promotion
- the employee is within the seniority unit/work group and position assignment who would normally be next in line for promotion to the higher rated job in which the vacancy exists.  
(General service operators do not qualify for detail/temporary promotion into a seniority unit.)
- the employee performs all of the duties and responsibilities and is skill-qualified for the higher rated job
- the employee is assigned to the higher pay grade for a full shift or longer

Only employees who have accumulated step progression credit at a higher grade level prior to September 1,2001 will have progression credit.

A non-exempt employee when detailed/temporarily promoted is:

- paid normal rate of pay when assigned to a higher pay grade for training

- paid at the higher rate for all hours worked when demoted to a higher pay grade for a full shift or longer
- paid the same rate the employee would receive if promoted

Temporary Assignment in Lower Pay Grade - if a non-exempt employee is involuntarily assigned to a lower pay grade, the employee's current pay rate/grade is retained. However, if an employee requests an assignment to a lower pay grade, she or he receives the pay rate closest to, but not greater than, the employee's current rate, but not to exceed the top of the rate range of the new grade.

Pay Feathering - in an effort to minimize negative impacts to non-exempt employees whose positions/grades are impacted by reductions in force (RIF) and other circumstances, WSRC has expanded the Feathered Pay Reduction policy. The policy includes demotions resulting from:

- disqualification of training or certification
- disqualification for medical reasons
- excessing or a RIF

The Feathered Pay Reduction policy does not include voluntary or disciplinary-related demotions. Feathering will not apply to exempt employees. If an exempt employee qualifies to return to a non-exempt unit and cannot maintain the previously held non-exempt grade, the feathering policy applies at that point.

Any non-exempt employee whose pay rate is impacted by the approved conditions described in this subsection is eligible for a gradually reduced pay scale rather than immediate cut back to the appropriate rate in the lower grade. The policy allows for reductions of \$50 or less at 6-month intervals; that is the most rapid reduction rate an impacted non-exempt employee could experience. HR Compensation has established feathered pay

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rates for each grade rate range, using a series of step combinations on the current non-exempt rate structure. These guidelines are used, as necessary, to stagger pay regressions.

Any non-exempt employee involved in a RIF is automatically eligible for gradual pay regression. Non-exempt employees notified of a RIF resulting in pay reduction due to bumping receive at least seven days' notice before the reduction schedule begins. Contact appropriate division HR when pay feathering is applicable.

### **Shift Differential (Exempts, Non-exempts, and SOP)**

Eight (8) Hour Shift Worker: Employees Regular Schedule—the shift differential for time worked—is determined by the starting time of that schedule as follows:

Starting between

10:00 p.m. and 5:59 a.m. \$0.40 per hour

6:00 a.m. and 1:59 p.m. \$0.00 per hour [2:00 p.m. and 9:59 p.m. \$0.20 per hour

Eight (8) Hour Shift Worker: Outside of Employee's Regular Schedule—the shift differential for time worked on a normal workday outside of the employee's regular schedule is determined as follows:

Midnight to 8:00 a.m. \$0.40 per hour

8:00 a.m. to 4:00 p.m. \$0.00 per hour

4:00 p.m. to midnight \$0.20 per hour

Twelve Hour Shift Worker - 'welve (12) Hour Shift Worker  
Regular Schedule and Outside Regular Schedule on 12 Hour Shift ~ The shift differential for time worked on the 12 hour shift is determined as follows:

12 Hour Shift Differential

Day shift \$0.00 per hour

Night shift \$0.40 per hour

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Holidays - the shift differential for time worked on a holiday is determined in accordance with information provided under shift differential section for 8- and 12-hour shift workers.

Shift Differential and Premium Pay - shift differential is included in determining the amount of premium pay.

### **Pay Based on Position Grade Guidelines for SOPs**

SOP employees' pay is based on entries recorded in TACs and approved by their manager. The employee is paid by check or direct deposit and mailed to the employee's address of choice no later than the last business day of the month which allows for one banking day before a weekend or holiday.

Work time calculation and compensation is in increments of 0.1 hour (six minutes). An employee who works for any part of a six-minute period is paid for the entire six-minute period as time worked.

Pay for time not directly on the job is specified above. Overtime pay practices for hours worked exceeding 40 hours in a work week are described in 5B, 2.26, "Overtime and Premium Pay for Selected Overtime Positions" (when revised Procedure 3-13).

### **Time Not Directly on the Job (Non-exempts and Selected Overtime Positions)**

For meal time not directly on the job, see Procedure 3-9, "Meals."

### **Meetings**

An employee is paid for time spent attending meetings required by the company.

### **Sign-up and Orientation of New Employee**

Pay at regular rate is paid to a new employee for time spent in sign-up and orientation. A new employee is instructed to report for such activity at the beginning of the workday.

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### **Required Clothes Change**

An employee is paid for time to permit clothes change when company requires and provides (at work facility) change of clothing. Time to permit such activity is provided within the employee's regular schedule.

Under unusual circumstances, an employee may be required to change clothes outside of regular schedule. Time to permit such change is added to actual work time for determination of total paid time.

### **Wash-up Time**

On some jobs, wash-up and clothes change may be considered appropriate even though not required by the company. Reasonable time for such activity is normally provided before completion of the employee's regular schedule. Such time is not to exceed ten minutes, including walk time from the job-site to the change room. An employee receives no pay for any time spent outside regular hours for non-required wash-up or clothes change.

### **Shift Turnover Relief for Exempts, Non-exempts, and SOPs**

Where operation is continuous and there is a mutual agreement, employees may receive shift turnover relief before shift starting time. In no instance is this shift turnover relief to be made earlier than ten minutes before shift starting time.

When employees are required to report 0.2 or 0.5 hours early for turnover relief, employees will work an 8.5,12.2, or 12.5 hour schedule.

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## **Pay for Time Spent in WSRC Medical (Non-exempts and SOPs)**

**Use of WSRC Medical Facilities** - WSRC Medical does not serve as an employee's personal physician; however, medical treatment not requiring outside attention is provided. Employees are expected to use WSRC Medical facilities as follows:

- report to the manager any on-the-job injury, no matter how slight, and promptly visit WSRC Medical to receive proper medical attention.
- report to the manager when returning to work after absence due to illness or injury. The manager refers the employee to report for examination. This is for the protection of the employee and fellow workers and determines the employee's fitness for duty.
- report to the manager, who refers the employee to WSRC Medical, when the employee reports to work with an illness or injury which occurred outside of work
- the employee becomes ill or is injured while on the job

**Medical-Related Pay Practices:** occupational injury or illness - an employee sustaining an occupational injury or illness, as defined here, is paid on the regular payroll as time worked:

- for all time spent in WSRC Medical waiting for and undergoing treatment, examination, or observation
- for time spent during regularly scheduled work hours waiting for and undergoing treatment, examination, or observation in offsite medical facilities when sent there by WSRC Medical
- for the remainder of the regularly scheduled shift during which the injury occurs

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An employee, as a result of a lost workday case, who loses sufficient time from work is to be carried on the Personal Injury Roll. The employee is paid in accordance with the provisions of the Special Benefits Plan, rather than under provisions applicable to the regular payroll. In this case, the timecard is marked PI (Personal Injury). Refer to the Employee Benefits Manual for guidance on the Special Benefits Plan for occupation-related disabilities.

Time in Medical Outside Regular Schedule - when an employee, as a result of an occupational injury, illness or contamination, is held in WSRC Medical after the end of the shift or is required to report to WSRC Medical outside regular scheduled work hours and is not being carried on the Personal Injury Roll, the manager and WSRC Medical are responsible for the following:

- WSRC Medical - after examination, treatment or observation, it is the responsibility of WSRC Medical to record on the Treatment Record (OSR 2-3)
  - the time and date the employee reported to WSRC Medical
  - the time and date the employee was dismissed from WSRC Medical
  - other pertinent information
- WSRC Medical - completes a Medical Attention form (OSR 2-1) in duplicate and distributes as follows:
  - original to employee to give to manager
  - duplicate to employee's WSRC medical file

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- Manager

- determines the time the employee was in WSRC Medical for treatment or observation outside scheduled work hours, from the completed medical attention form. An employee who is required to report to WSRC Medical during hours not consecutive with regular work hours is paid a minimum of four hours pay.
- enters the indicated amount of time in the appropriate column(s) on Employee's Time Record and on the timecard
- makes the notation, "Pay hours for time spent in Medical - Work related Injury," under Remarks on the employee's timecard and time record
- files the medical attention form in the employee's departmental folder

Non-occupational Illness or Injury Occurring during Working Hours - an employee is paid as time worked for time spent during scheduled work hours in WSRC Medical. When WSRC Medical decides an employee should not return to work, the employee is paid for the balance of the shift under provisions governing pay for non-occupational disability.

Non-occupational Illness or Injury Occurring Before Working Hours - an employee who reports to work with an illness or injury, but is sent home on the recommendation of WSRC Medical, is paid for the full day under provisions governing pay for non-occupational disability.

Return from Disability - time spent checking through WSRC Medical on return from disability is paid as time worked if the employee is returned to work for the remainder of the shift. If

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not returned to work, the employee is continued on the disability roll if the absence qualifies for short-term disability pay. If the absence does not qualify for short-term disability, the employee uses hours from their time bank. However, time spent in medical is paid as time worked.

Normally, an employee is not directed by WSRC Medical to report at a time outside of the employee's regular work hours. If so directed, the time spent in WSRC Medical is considered as time worked. When such cases occur, WSRC Medical completes an OSR 2-1 and distributes as shown under section titled Time in Medical Outside Regular Schedule.

Transportation - an employee is provided transportation home, if ride accommodations are missed due to:

being dismissed from work on recommendation of WSRC Medical before a reasonable period preceding the end of the shift, or if Medical determines the employee should not drive  
being held beyond the employee's shift for decontamination wash-up, medical treatment, or observation.

Payment is not made for time spent outside regularly scheduled hours of work waiting for transportation. The employee's manager authorizes and arranges transportation home for the employee. OSR 2-1 is completed by Medical when transportation is provided for sick or injured employees.

#### **Decontamination Wash-up**

When management/Radiological Control Operations requires an employee to be held over beyond scheduled hours of work for the purpose of decontamination, the time is considered as hours worked. In such situations, Radiological Control Operations determines when the employee may leave the site.

#### **Make-Up Time (Non-Exempt/Selected Overtime Positions [SOP])**

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Make-up time practices allow an employee, at their request, the ability to take time off for personal reasons with pay. This practice does not replace company plans that allow for excused absences with pay. It provides an option for employees to occasionally seek a variance from their established work schedule. This practice is not to be used as flex time. See also:

- Practice 2.12, "Pay for Time Not Worked" (when revised procedure 3-14)
- Practice 2.19, "WSRC Time Bank Plan" (when revised Procedure 3-2)
- Practice 2.24, "Disability Management and Compensation" (when revised Procedure 4-6)
- Practice 2.25, "Leaves of Absence" (when revised Procedure 3-14)

### **Conditions**

NOTE: Management ensures the employee understands that no premium pay is due for make-up time. One shift means eight hours for an 8-hour-a-day employee; nine hours for 9/80s shifts; 10 hours for 4/10 shifts; and 12 hours for 12-hour shift personnel. Turnover time may be included in the make-up time worked and make-up time off.

Time off for personal reasons and make-up time in 6-minute (0.1 hour) increments requires prior approval by management. Make-up time not to exceed one shift of cumulative hours in a weekly pay period may be approved provided the:

- make-up time is requested by the employee
- management assures productive work is performed by the employee during the make-up time. In some cases, this work may be supervised indirectly but accountability for time worked and paid remains the manager's responsibility.
- make-up time is within the same weekly pay period as the absence

- make-up time does not create the need for premium pay for the employee or others. The employee waives premium pay for make-up time worked outside the regular schedule.

If unable to complete scheduled make-up time due to absence because of disability, company plans, emergency, etc., the make-up time agreement is canceled and determination of payment for the approved time off is in accordance with current pay practices.

When the employee has completed the work (make-up time) outside the normal work schedule and later in the same pay period is absent due to disability, company plan, emergency, etc., the make-up time agreement remains in effect.

### **Schedule**

When make-up time is requested by the employee and approved by management, the make-up time is considered the employee's regular schedule.

### **Administration with Other WSRC Programs**

NOTE: Make-up time for non-exempt personnel is not compensatory in lieu of pay. Compensatory time is a separate, exempt, employee practice and is governed by 5B, Practice 2.23, "Exempt Employee Overtime Administration" (when revised Procedure 3-12).

Only in extremely rare cases can make-up time be granted in conjunction with time bank hours, excused time with pay, or excused time without pay. Management is expected to select the appropriate option for time off if make-up time is requested and cannot be used.

Provided make-up time conditions are met, requests are considered on a first-come, first-served basis, no sooner than 14 calendar days and normally no later than 24 hours before the requested schedule deviation.

Employees working other than Monday through Friday, e.g., 12.5-hour shift work, are expected to make-up time on their days off, if approved by management. Make-up time is worked within existing work-limitation policies, i.e., 12-hour work limitation may apply.

If an employee is scheduled to work make-up time and an overtime opportunity arises, that employee is considered unavailable and is not offered or charged with the overtime for hours agreed upon as make-up time. However, overtime offers can be made in conjunction with make-up time. Management must handle overtime and make-up time separately.

### **Time Record**

The employee's time record reflects the actual hours worked each day. When time is made up in conjunction with the employee's regular shift or on a day of rest the make-up time worked is recorded in the make-up column. Make-up time worked and all other regular scheduled hours should equate the weekly schedule. ( See also, Practices 2.11, "Pay for Time Worked" [when revised Procedure 3-3] and 2.12, "Company Plan Absences" [when revised Procedure 3-14].)

### **Records**

Records generated as a result of implementing this procedure are processed in accordance with Procedure Manual IB, MRP 3.31, "Records Management."

### **References**

- Procedure Manual *VB, Management Requirements and Procedures*, MRP 3.31, "Records Management"
- Procedure Manual <sup>^</sup>B, Human Resources Manual
  - Practice 2.8, "Employee Records" (when revised Procedure 1-2)
  - Practice 2.9, "Termination Practices" (when revised Procedure 2-5)

## **APPENDIX MF**

- Practice 2.12 /'Company Plan Absences" (when revised Procedure 3-14)
- Practice 2.13, "Nonexempt Overtime and Premium Pay" (when revised Procedure 3-11)
- Practice 2.26, "Overtime and Premium Pay for Selected Overtime Positions" (when revised Procedure 3-13)

**Forms**

OSR 2-1, Medical Attention

OSR 2-3, Treatment Record

OSR 5-8, Change of Status

**Requirements Control System**

None

**Attachments**

None

## **WSRC 5B Human Resources Policies, Practices and Procedures**

### **Procedure 3.6 Grievance Procedure**

Revision No. 5 May 6, 1999

- Purpose
- Scope
- Terms and Definitions
- Responsibilities
  - Human Resources (HR)
  - Immediate Management
  - Level 2 Manager
  - Level 1 Manager or Designee
- 1. Program Description
  - Step One
  - Step Two
  - Step Three
- 2. Time For Holding Grievance Conferences
- 3. Grievance Reports and Records
  - Report Preparation
  - Records
- Records
- References
  - Requirements Control System
- Attachments

#### **Purpose**

This procedure outlines the Westinghouse Savannah River Company (WSRC) grievance procedure which is designed to allow an employee to formally discuss with management any condition related to employment which the employee considers unsatisfactory.

#### **APPENDIX MH**

## **Scope**

This procedure applies to all active full-service WSRC nonexempt employees.

Records management of grievance-related documentation is addressed in 5B, Practice 2.8, "Employee Records."

## **Terms and Definitions**

Definitions are in 4.3, "Glossary of Terms." Responsibilities

### **Human Resources (HR)**

HR is responsible for

- assisting employees in solving problems and grievances
- providing advice and help to an employee, if requested, before formal grievance initiation
- assisting the employee, if requested, in appealing a grievance
- providing guidance and policy interpretations to management when responding to grievances, as appropriate
- tracking and monitoring grievance documentation

### **Immediate Management**

Immediate management is responsible for

- notifying line management and the division HR manager immediately upon receipt of a formal employee grievance
- discussing the condition with the employee and conducting necessary investigations
- answering grievances within five working days after receipt
- making arrangements for Step Two if a grievance is not settled at Step One

### **Level 2 Manager**

The Level 2 manager is responsible for

## **APPENDIX MH**

- scheduling a conference date with the employee within five working days from the date the employee makes the request
- conducting further investigation, if necessary
- answering a grievance within five working days after the conference
- making arrangements for Step Three if a grievance is not settled at Step Two

### **Level 1 Manager or Designee**

The Level 1 manager or designee is responsible for

- scheduling a conference date with the employee within five working days from the date the employee makes the request
- conducting further investigation, if necessary
- answering grievance at the conference or telling the employee the date on which the answer will be given, pending further investigation

### **Procedure**

The procedure is divided into three subsections:

1. Program Description
2. Time for Holding Grievance Conferences
3. Grievance Reporting and Records

Employees must file their grievances within six months of the affected date of the action being grieved upon unless it involves a violation of State or Federal law and/or regulation. If the action grieved upon involves a State or Federal law and/or regulation, the time specified in the law or regulation for filing a complaint applies.

### **Program Description**

## **APPENDIX MH**

- A. In a normal company business environment, misunderstandings may occur between employees and supervision. Management intends to resolve all grievances in a manner that ensures the fair and equitable treatment of all concerned. All grievances should be presented to the employee's management promptly and settled as quickly as possible.
- B. In preparing and presenting the grievance, the employee may ask the assistance of, or be accompanied by, one of the following:
  - another employee
  - a member of supervision
  - a member of HR (including an Employee Counselor)
- C. HR helps employees and management solve problems and grievances. If an employee wants advice or help before initiating a formal grievance, or help to appeal the grievance, the employee may:
  - discuss the matter with HR
  - request assistance from HR

#### **Step One**

- A. Employees should promptly present any grievance to their immediate management.
- B. Immediate management discusses the condition with the employee makes such investigation as necessary gives the employee an answer as soon as possible, but not later than five working days after the original discussion (excluding weekends and holidays) When a written grievance is submitted, management immediately notifies line management and division HR.

#### **APPENDIX MH**

C. If, after the answer is given, the grievance is not satisfactorily resolved, the employee tells management their desire to take the grievance to Step Two (appealing Step One) for further discussion.

D. Management handling Step One makes necessary arrangements for Step Two as soon as the employee makes the request.

### **Step Two**

When an employee requests discussion at Step Two, the Level 2 manager sets a date for the conference to be held within five working days (excluding weekends and holidays) from the date of the request.

A. At the Step Two conference

the employee is urged to discuss fully all the facts concerning the grievance

the person hearing the grievance performs any necessary further investigation of the circumstances and gives the employee an answer within five working days (excluding weekends and holidays) after the conference

B. If, after this answer is given, the grievance is not satisfactorily resolved, the employee tells line management their desire to take the grievance to Step Three for further discussion.

C. The manager handling Step Two makes the arrangements for Step Three immediately upon the employee request.

### **Step Three**

A. When advised that an employee requests discussion at Step Three, the Level 1 manager or designee sets a date for the conference to be held within five working days (excluding weekends and holidays) from the date that the employee made the request.

## **APPENDIX MH**

B. At the Step Three conference, the employee is again urged to state fully all the facts concerning the grievance. The Level 1 manager or designee may answer the employee at this time or, if further investigation is necessary, tells the employee the date on which the answer will be given.

The Step Three answer is final, there is no provision for further appeal.

## **2. Time For Holding Grievance Conferences**

All grievance conferences are held during the working hours of the aggrieved employee. Any employee who loses time from regular duties in the presentation of a grievance suffers no loss of earnings; i.e., this is considered time-worked for pay purposes. However, another employee assisting or accompanying the aggrieved outside that employee's regular schedule, is not paid, under this procedure, for the additional time.

## **3. Grievance Reports and Records**

### **Report Preparation**

Upon becoming aware of the grievance, management who handles the grievance at Step One notifies division HR by memorandum through the Level 2 manager. This is done at once, even though the Step One answer has not yet been given.

### **Records**

A. Immediately after each step where the grievance is heard and answered, management handling that step prepares OSR 5-28, "Record of Grievance." The record should be a complete, clear, and concise summary of all pertinent facts.

B. Copies of the Record of Grievance are forwarded promptly:

- original — division HR
- copy ~ HR Policy and Practices
- copy — manager handling next step, if grievance is not settled
- copy — Level 2 manager

C. No copy of a Grievance Record or any other documentation pertaining to any grievance is ever filed in an employee's personnel file. Permanent Grievance Records are maintained by HR in separate files.

### **Records**

Records generated as a result of implementing these practices are managed in accordance with referenced site requirements.

### **References**

- DOE 1324.5B, Records Management Program
- Procedure Manual J\_B, MRP 3.31, "Records Management"
- Procedure Manual 5B, Human Resources Policies, Practices and Procedures
- WSRC-EM-96-00023, Record Schedule Matrix (RSM)

### **Requirements Control System**

None

### **Attachments**

None

## **APPENDIX MH**

## 5B Human Resources Policies, Practices and Procedures

### **Policy 3.15 Personal Assessment and Development Process**

Revision 0 February 27, 1998

- Purpose
- Scope
- Terms and Definitions
- Responsibilities
  - Employees
  - Division HR Manager
  - Managers
- Procedure
  - A. Phase I: Initial Expectations Meeting
  - B. Phase II: Interim
  - C. Phase III: Close-Out Meeting
- Records
- References
  - Requirements Control System
- Attachments
  - Attachment A. PADP Process Flow Chart

#### **Purpose**

This procedure details the administration of the Westinghouse Savannah River Company (WSRC) established process for assessing employees' job performance and developmental needs. The Personal Assessment and Development Process (PADP) is documented via OSR 5-333, "Personal Assessment and Development Process", form.

#### **Scope**

This procedure is applicable to all full-service WSRC employees and its partners. (BSRI craft does not participate in this process)

#### **APPENDIX MI**

## **Terms and Definitions**

Definitions are in 4.3, "Glossary of Terms."

## **Responsibilities**

### **Employees**

Employees are responsible for

- participating in Initial Expectations Meetings at the beginning of the fiscal year with their immediate manager or supervisor
- completing Sections I, II, III and IV of the PADP form in collaboration with their immediate manager or supervisor
- identifying MultiSource Feedback evaluators in collaboration with their immediate manager or supervisor
- requesting interim review(s) of individual performance if necessary and/or desired
- completing Section VII of the PADP form (optional)
- participating in a Close-Out Meeting with their immediate manager or supervisor during which job performance is assessed and development actions are identified and agreed to by both parties.

### **Division HR Manager**

The Division HR Manager is responsible for ensuring that administration of the PADP process within the division meets the standard requirements of this procedure, including appropriate documentation.

### **Managers**

All managers and supervisors are responsible for

- communicating and implementing the PADP with their direct reports
- conducting Initial Expectations Meetings at the beginning of the fiscal year with their employees

- identifying MultiSource Feedback evaluators in collaboration with their employees
- conducting interim review(s) of individual performance if necessary and/or desired by either the employee or the manager or supervisor
- conducting a Close-Out Meeting with each of their direct reports during which performance is assessed and developmental actions are identified and agreed to by both parties
- facilitating a meeting with the employee and the next level of management concerning the employee's performance assessment, if requested by the employee
- providing completed PADP original forms for each of their direct reports to the HR Division Lead for storage in the employees' personnel file.

### **Procedure**

The objectives of this procedure is to provide for an annual assessment of performance which identifies strengths and areas for improvement related to job responsibilities, allowing for candid and open two-way communications between an employee and manager or supervisor.

This procedure is divided into 3 subsections.

- A. Phase I: Initial Expectations Meeting
- B. Phase II: Interim
- C. Phase III: Close-Out Meeting

#### **A. Phase I: Initial Expectations Meeting**

Prior to and/or during the Initial Expectations Meeting, the employee and the manager or supervisor collaborate and develop a draft input for Sections I, II, III, and IV of the PADP form.

## **APPENDIX MI**

1. Using the completed draft, the employee and the manager or supervisor meet to review the employee's Job Scope Statement, time-based objectives (if applicable), and individual professional development plan. Discussions also focus on the expectations of the manager or supervisor with regard to the employee's performance of job duties and responsibilities.
2. All additions or changes resulting from this collaborative discussion are then incorporated into the PADP form.
3. The employee documents understanding of and commitment to the annual Safety and Ethics pledges.
4. Both the employee and the manager or supervisor sign and date the PADP form at the end of Section IV.
5. If the employee is scheduled to receive MultiSource Feedback during the upcoming performance period, then this process is also reviewed during the Initial Expectations Meeting. Evaluators are identified collaboratively between the employee and the manager or supervisor as described in the PADP Handbook, Section 6.0.

**NOTE:** MultiSource Feedback will be implemented utilizing the following schedule:

- FY 98 - All Managers and Supervisors
- FY 99 - All Professional/Exempt employees
- FY 00 - All Nonexempt employees excluding BSRI craft employee

#### **B. Phase II: Interim**

An interim review is not mandatory, however, it may be conducted at the request of the employee or the manager/supervisor.

#### **APPENDIX MI**

An interim review is recommended when there is

- a significant change in the employee's job scope and/or time-based objectives during the performance period
- a reassignment of the employee to a new job assignment during the performance period
- a change of immediate manager or supervisor during the performance period

Changes made to the original PADP during the course of the performance period should be documented. A copy of the original PADP should be maintained and supplemented with all necessary revisions.

### **C. Phase III: Close-Out Meeting**

To prepare for the annual Close-Out Meeting, both the employee and manager or supervisor should review information documented in Sections I, II, III, IV of the employee's PADP form, consider the results contained in the employee's MultiSource Feedback Report (if applicable in the performance year), and identify issues to be discussed at the meeting.

#### **1. Employee prepares for Close-Out Meeting by**

- documenting status of all time-based objectives
- providing status of time-based objectives and developmental action to the immediate
- manager or supervisor
- reviewing section V, "Core Competencies"
- drafting comments for Section VII (optional)

#### **2. Manager or supervisor prepares for Close-Out Meeting by**

- completing Section V, "Core Competencies"
- completing Section VI, "Reviewer's Comments",
- signing and dating the PADP in the blocks immediately following Section VII.

#### **3. During the Close-Out Meeting, the employee and the manager or supervisor**

- review the employee's job performance and assess the degree to which management expectations were met
- review and document all of the manager or supervisor's comments documented in the PADP form
- review and document all of the employee's comments
- collaborate in planning for the next year's PADP

4. If a desire for further response is indicated by the employee, a second meeting will be scheduled. During the management review meeting, the employee along with the immediate manager or supervisor and the next level manager

- will review and discuss the employee's job performance and the degree to which management expectations have been met
- address specific questions and/or concerns expressed by the employee
- document the outcome of these discussions in Section VIII of the PADP form
- sign and date in the blocks immediately following Section VIII of the PADP form.

The completed PADP, including any and all changes made during the year, should be signed and dated by the employee at the end of the Close-Out Meeting (or if applicable, at the end of the management review meeting). The original is then submitted to the HR division Lead/Rep for storage in the employee's personnel file per site requirements.

Copies of the completed PADP should be provided to the employee and also retained by the immediate manager or supervisor.

### **Records**

The record generated by this procedure is Westinghouse Savannah River Company OSR 5-333,

"Personal Assessment and Development Process", (PADP). It is managed in accordance with site requirements.

## **WSRC 5B Human Resources Policies, Practices and Procedures**

### **Procedure 3.13 Americans With Disabilities Act (ADA) Accommodation**

Revision 3 12/28/99

- Purpose
- Scope
- Terms and Definitions
- Responsibilities
  - Division Human Resources (HR) o Employees
  - Equal Employment Operations (EEO)
  - Line Management Procedure
    - 1. Current Employees
    - 2. Interviewing Process
    - 3. Applicants or New Employees
- Records
- References
  - Forms
- Requirements Control System
- Attachments

**Date: 12/28/99**

### **Procedure Manual SB, Human Resources Policies, Practices and Procedures Procedure Revision Summary**

- 1. Procedure and Revision #:** 3.13, Rev. 3
- 2. Procedure Title:** Americans With Disabilities Act (ADA) Accommodation
- 3. Effective Date:** 12/28/99

### **APPENDIX MJ**

**4. Procedure Changes:** Added statement to be consistent with practice - If no vacancy for nonexempt employee within the same grade level and unit exists, the employee is placed in accordance with the Staffing Practice (5B, Practice 2.2, Section 6 & 7)

**5. Training Requirements:** Supervision and employees should become familiar with the new/revised requirements. No additional training is required.

### **Purpose**

The purposes of this procedure are to:

- enable Westinghouse Savannah River Company (WSRC) management to comply with Americans with Disabilities Act (ADA) job accommodation guidelines
- prevent discrimination based on the disabilities of otherwise qualified individuals
- ensure reasonable accommodations are made for otherwise qualified individuals with disabilities
- outline the process for accommodating qualified, disabled employees and/or applicants so they may perform their essential job functions

### **Scope**

The procedure applies to all WSRC employees and applicants.

### **Terms and Definitions**

Terms are defined in Section 4.3, "Glossary of Terms."

### **Responsibilities**

#### **Division Human Resources (HR)**

Division HR is responsible for

- determining, when notified that an accommodation is needed and with medical concurrence, whether an employee is covered under the ADA
- initiating the reasonable accommodation process, for ADA-covered employees

- working with supervision, Equal Employment Operations (EEO) and outside sources such as the Job Accommodation Network, to identify accommodation alternatives
- initiating the Reasonable Accommodation Form (OSR 5-316) and ensuring its completion
- coordinating the search to identify vacant positions for which the employee is qualified if no accommodation can be made in the current job assignment
- notifying EEO of the accommodation request
- preparing a complete accommodation packet to submit to EEO for review prior to accommodation implementation

### **Employees**

Employees with disabilities are responsible for making their need for accommodation known by

- notifying their line management that they can no longer perform any or all of their essential job function(s)
- making Medical aware of this need upon return to work after a disability occurs
- making Medical aware of this need during the periodic medical examination

### **Equal Employment Operations (EEO)**

EEO is responsible for:

- providing technical assistance to division HR throughout the accommodation process, as necessary
- reviewing all ADA packets before accommodation is implemented, to ensure compliance with the law
- requesting reconsideration of an accommodation if the ADA packet is found to not be in compliance with the law

## **APPENDIX MJ**

## **Line Management**

Line management is responsible for

- notifying HR when the need for an accommodation becomes known
- informing the employee, by an informative contact or memorandum, when the accommodation processing is initiated and of the disposition and conclusion of the process
- working with HR as needed to assist in the reasonable accommodation process after EEO approval of the ADA packet

## **Procedure**

The procedure is divided into sections:

1. Current Employees
2. Applicants or New Employees
3. Interviewing Process

### **1. Current Employees**

A. Management contacts division HR when a qualified employee with a disability cannot perform an essential function(s) of their job. Accommodation needs become known by either or both of the following:

- employee requests an accommodation
- WSRC Medical places permanent restrictions on an employee by issuing a revised OSR 2-22, Medical Information Form

Division HR notifies EEO when line management makes the accommodation request known.

## **APPENDIX MJ**

B. Line management works with WSRC Medical, division HR, and the employee to determine precise job-related limitations, listing which essential job functions the individual can no longer perform or can perform with difficulty. A Reasonable Accommodation Form (OSR 5-316) is initiated at this point, based on available information.

C. Line management uses an informative contact (OSR 5-317) to notify the disabled employee of the initiation of the Reasonable Accommodation Process.

D. Division HR makes field visits to aid in determining potential accommodations and determines what assistance is available to allow the employee to perform essential job functions. All potential accommodations and their effectiveness are listed on the Reasonable Accommodation Form (OSR 5-316). If necessary, EEO and organizations such as the Job Accommodation Network are consulted for technical assistance.

E. Division HR initiates an ad hoc Accommodation Committee consisting of line management, Medical, HR Policy and Practices personnel and others, as appropriate, to discuss all possible accommodations. Issues of direct threat and undue hardship are considered at this point.

Accommodation in the employee's current position(s) must be considered before beginning any consideration of moving the individual to another position for which he or she is qualified. In some cases, the individual may be temporarily accommodated until all options have been thoroughly explored by the decision-making group and a more permanent solution reached.

## **APPENDIX MJ**

F. If employees cannot be reasonably accommodated in their current positions, the following steps are taken, in order:

1. Efforts are made to find vacant positions, in the same grade level, for which they are qualified and where they can perform essential job functions, with or without accommodation. If no vacancy for employees within the nonexempt roll within the same grade level and unit exists, the employee is placed in accordance with the Staffing Practice (5B, Practice 2.23 Sections 6 and 7).
2. If a lateral move cannot be made, an attempt is made to place the employee in a lower-graded position for which he or she is qualified and where the employee can perform essential job functions, with or without accommodation. If no vacancy for employees within the nonexempt roll within the same grade level and unit exists the employee is placed in accordance with the Staffing Practice (5B, Practice 2.23, Sections 6 and 7). Non-exempt employees placed in lower-graded positions are eligible for "feathered pay reduction" (5B, 2.11, Section 1).

NOTE: If more than one ADA candidate, the situation may warrant canvassing according to the established seniority system (site seniority).

G. The Accommodation Committee:

agrees on the most appropriate accommodation for the employee and WSRC

- completes the accommodation packet
- submits the accommodation packet to EEO for review before implementation

H. EEO reviews and approves the accommodation packet. Line management notifies the disabled employee, by informative contact or memorandum, of the accommodation to be provided and its effective date.

I. The individual may not be considered qualified, and WSRC may medically discontinue, if it is determined no reasonable accommodation can be made. Refer to 5B, Practice 2.9, "Termination Practices."

## **2. Interviewing Process**

A. During the interview process, the interviewer may:

- seek notice and/or documentation of accommodations requested, relative to skills tests, etc
- ask whether the applicant can perform the essential functions of the position, with or without reasonable accommodation

B. If an applicant alerts WSRC about an accommodation need in the application process, i.e., during testing or an interview, the interviewer, manager, or HR personnel immediately contacts EEO so that the issue can be addressed in appropriate compliance with ADA requirements.

## **3. Applicants or New Employees**

A. If no reasonable accommodation is available in the position for which an individual is hired, reassignment to another position is not available, refer to 5B, Practice 2.9, "Termination Practices."

B. WSRC may become aware of an accommodation need for newly hired employees or applicants in one or both of 2 ways:

- after the post-offer examination is performed, Medical imposes, and documents on the Medical Information Form, OSR 2-22, certain permanent medical restrictions
- the individual requests an accommodation

When the need for accommodation is identified, line management contacts their division HR, who in turn notifies EEO.

## **APPENDIX MJ**

**C. Line management:**

- asks the disabled individual if he or she has any accommodation suggestions to be considered
- discusses the issue of continued employment being contingent upon identifying a reasonable accommodation
- notifies the disabled individual, by informative contact (OSR 5-317), that the Reasonable Accommodation Process is being initiated

**D. Line management** works with division HR, Medical, and the disabled individual to determine precise, job-related limitations and listing which essential functions of the job the individual needs accommodation to perform. A Reasonable Accommodation Form (OSR 5-316) is initiated at this point.

**E. Division HR:**

- makes field visits to aid in determining potential accommodations
- determines what assistance is available to accommodate the individual and allow performance of essential job functions
- contacts, as necessary, organizations such as EEO and the Job Accommodation Network for technical assistance
- list all potential accommodations, and their effectiveness, on the Reasonable Accommodation Form (OSR 5-316)

**F. Division HR** initiates an ad hoc Accommodation Committee consisting of line management, medical, HR Policy and Practices and others as appropriate to discuss all possible accommodations. Issues of direct threat and undue hardship are considered at this point.

**APPENDIX MJ**

In some cases, the individual may be temporarily accommodated, depending on the type and severity of the disability and the essential job functions, until all options have been thoroughly explored by the decision-making group and a more permanent solution reached.

#### **G The Accommodation Committee**

- agrees on the most appropriate accommodation for the individual and WSRC
- documents the proposed accommodation in the accommodation packet
- submits the accommodation packet to EEO for review before implementation

H. Individuals that cannot be reasonably accommodated are notified and processed under 5B, Practice 2.9, "Termination Practices."

I. EEO reviews and approves the ADA packet. Line management notifies the disabled employee, by informative contact (OSR 5-317), of the accommodation to be provided and its effective date.

#### **Records**

Medical records, including employee medical and disability history and diagnosis, are maintained as confidential files, separately from other personnel records, in accordance with site requirements.

EEO maintains the official documentation of reasonable accommodation cases.

Records generated as a result of implementing this procedure are processed in accordance with Procedure Manual IB, MRP 3.31, "Records Management".

#### **APPENDIX MJ**

## **References**

- DOE 1324.5B, Records Management Program
- Corporate Directive, CDC-2503, October 1990, Westinghouse Electric Corporation, "Equal Employment Opportunity"
- Corporate Directive, CDC-2505, January 1991, Westinghouse Electric Corporation, "Privacy of Personal Information"
- Procedure Manual J\_B, MRP 3.31, "Records Management"
- Procedure Manual 5B, Practice 2.9, "Termination Practices"  
Procedure Manual 5B, Practice 2.11, "Pay for Time Worked"
- WSRC-EM-96-00023, WSRC Retention Schedule Matrix (RSM)
- annual WSRC Disabled/Veterans policy letter

## **Forms**

OSR 5-316 WSRC Reasonable Accommodation Form  
OSR 5-317 Employee Information Record

## **Requirements Control System**

None

## **Attachments**

None

## **APPENDIX MJ**

Mary Hamilton Anderson, M.D  
Pediatric and Adolescent Allergy  
2315 Central Avenue  
Augusta, Ga. 30904  
Phone (706) 737-0303

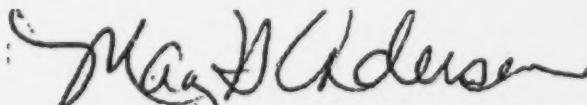
July 11, 2001

To Whom It May Concern:

Nigel Lawrence is a patient I have followed for many years with significant asthma and allergies. He is allergic to pollens, dust mite, and molds and has frequent sinus infections. He has to stay on regular medications for his asthma to include Albuterol jet nebulizer treatments, Advair Diskus, Singulair, and frequent oral steroids to keep his symptoms under control. Nigel has been hospitalized many times for exacerbation of his asthma with numerous severe episodes requiring admission to the intensive care unit.

Please feel free to contact my office with any questions or concerns.

Sincerely,



---

Mary H. Anderson, M.D. MHA/mh  
Medical Services Provided by Allergy Partners, PA.



No. 05-994

Supreme Court, U.S.  
FILED

MAR 10 2006

OFFICE OF THE CLERK

In The  
**Supreme Court of the United States**

CHRISTOPHER LAWRENCE,

*Petitioner,*

v.

WESTINGHOUSE SAVANNAH  
RIVER COMPANY, LLC,

*Respondent.*

On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fourth Circuit

**BRIEF IN OPPOSITION TO PETITION  
FOR A WRIT OF CERTIORARI**

CHARLES F. THOMPSON, JR.  
MALONE, THOMPSON &  
SUMMERS LLC  
1312 Gadsden Street  
Columbia, SC 29201  
803-254-3300

*Counsel of Record  
for Respondent*

## **QUESTIONS PRESENTED<sup>1</sup>**

1. Has Lawrence made out any of the required "compelling reasons" required for this Court to review the decisions of the lower courts?
2. Does Lawrence have any grounds for claiming the lower courts ruled against him because he is an African-American Pro Se litigant and can these issues be raised before this Court?
3. Does Lawrence have any basis for his objections to the Magistrate Judge's discovery rulings and the Magistrate Judge's method of marshalling facts before he ruled on WSRC's motion for summary judgment?
4. In the event this Court decides to review a question of South Carolina law, did the lower courts err in finding Lawrence failed to make out a claim he had a contract of employment that WSRC violated by discharging him?

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<sup>1</sup> Respondent has not presented an alternative to each of the Statements required to be presented by Petitioner by Sup. Ct. R. 14. Instead it presents alternatives only to those which were omitted by Petitioner or with which it disagrees.

## **CORPORATE DISCLOSURE STATEMENT**

Westinghouse Savannah River Company LLC (WSRC) is a wholly-owned subsidiary of Washington Group International. In December 2005, the name Westinghouse Savannah River Company LLC was changed to Washington Savannah River Company LLC.

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## STATEMENT OF JURISDICTION

This case was originally filed claiming breach of contract and racial discrimination. Lawrence abandoned his claim of racial discrimination before the United States Magistrate Judge. The District Court exercised its supplemental jurisdiction of the only remaining claim (the state-law contract claim) and dismissed this claim on WSRC's motion for summary judgment. Lawrence appealed to the United States Court of Appeals for the Fourth Circuit which affirmed the decision of the District Court based on the reasoning of the District Court.

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## STATEMENT OF THE CASE

Lawrence was first employed by WSRC in 1989. (Tab 1, 7).<sup>2</sup> His last job was as a "building operator." It is a building operator's job to set up and monitor production processes. (Tab 1, 53).

Lawrence had a history of poor attendance and issues related to attendance. His employment record is replete with numerous warnings, counselings, and deficient performance reviews noting his consistent failure to meet management's attendance expectations.<sup>3</sup> Throughout his

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<sup>2</sup> This matter was considered by the Fourth Circuit Court of Appeals under its rules regarding pro se appeals under which no Joint Appendix is submitted. References to "Tab" (unless otherwise noted) refer to Westinghouse's Tabbed Attachments to its Summary Judgment Memorandum filed on January 5, 2004. Exhibits begin with the Tab number behind which the exhibit can be found. References to depositions begin with the name of the deponent followed by the deposition transcript number.

<sup>3</sup> See references following.

employment with WSRC, Lawrence was repeatedly warned for being missing from his work area (Tab 3, 47<sup>4</sup>), for failing to let supervision know he was going to be absent (Tab 4, 50), and, in almost every year of his employment, for failing to keep unexcused absences under 40 hours per year. (Tab 5, 60), (Tab 7, 87), (Tab 8, 97), (Tab 9, 101), (Tab 10, 106), (Tab 11, 116).

Throughout his employment, and in this lawsuit, Lawrence asserted that management could not require him to keep his unexcused absences (which does not include excused days, vacation days, or holidays) under 40 hours per year because no WSRC policy authorized such a standard. (Tab 1, 16, 33-34). He therefore claims that he could not be punished for any absences, no matter how great, if there was no policy statement specifically setting an exact attendance limitation. (Tab 1, 20, 33-34). Lawrence felt that, as long as he had an excuse (not necessarily medical), he could be absent however much he wanted and management could not instruct him otherwise. (Tab 1, 36, 38). Lawrence was belligerent and insubordinate toward supervision and management on these issues. (Tab 14, 205).

In February 2000, Lawrence was assigned to a new division (NMSS) where he continued his refusal to comply with attendance expectations. (Tab 15, 216). His new supervisors and manager, however, were less tolerant with his intransigence and increasingly sought to force Lawrence to comply with their attendance expectations.

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<sup>4</sup> This number refers to the Defendant's counsel's document numbering system and it is included in the event it becomes necessary to put the document in the context of other documents.

Amazingly, within the first twelve days in his new job, Lawrence was late three consecutive days and took six short vacations without giving the required 24-hour notice. Concerned that Lawrence was off to a bad start regarding his attendance, his new manager gave him an "advisory contact" about keeping his absences under control and notifying him that he must adhere to the absence notice requirements. (Tab 21, 290-291).

By April 2000, Lawrence had exceeded his allowed absences. He was therefore warned that any further unexcused absences would result in discipline and future absences must be limited to genuine emergencies. (Tab 22, 302).

On April 17, 2000 Lawrence was allowed to go to the medical department because he was complaining of a sore throat. When he did not return to work the next day or the one after that, his supervisor called the medical department seeking information about his absence. Medical informed management that they sent Lawrence to an off-site clinic on April 17 and did not know anything else. Lawrence ended up being out for a week and never did bring a doctor's note. (Tab 23, 301).

In May 2000, Lawrence told the medical department that he is going to have a bunionectomy in August 2000. (Tab 24, 780).

On May 10, 2000 management gave Lawrence yet another contact informing him that his attendance was unacceptable and that any future medical absences must be authorized by a doctor's note and that he must check in to the site medical department if he had further medical absences. He was also informed that his future attendance was subject to monitoring. (Tab 25, 313).

On June 5, 2000 Lawrence asked for time off to attend to an "emergency" at a California factory that supplies his clothing store business. (For most of the time Lawrence worked for WSRC, he also owned and operated a men's clothing store.) This was his second absence since the May contact. After this, management instructed all its supervisors that they were not to give Lawrence any more excused time off. (Tab 26, 330, 331, 328).

On June 7, 2000 Lawrence got into a heated argument with his manager because he thought the manager was harassing him about being away from his assigned work station. Lawrence yelled at his manager and became angry. As a result of the confrontation, Lawrence was warned that he must remain civil to his management. (Tab 27, 332-334).

On July 28, 2000 Lawrence was absent from work to get blood work done in preparation for his bunionectomy.<sup>5</sup> When he did come to work, he was excused to go home because he said he felt groggy. (Tab 24, 780). He was absent the next day as well. Although Lawrence was going out to surgery on August 1 and a WSRC doctor knew this,

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<sup>5</sup> This was the second time Lawrence was out of work for a bunionectomy. The first time, in 1998, was remarkably parallel in facts to his second leave from work to get a bunionectomy. In 1998, he told his supervisor he would be out of work for eight weeks. (Tab 18, 262, 775). The WSRC medical department said eight weeks was excessive, however, advised management not to do anything until Lawrence brought a doctor's note in. (Tab 18, 775). Lawrence's doctor's note had working restrictions but did not preclude Lawrence from working. (Tab 18, 775). Lawrence was upset and could not seem to understand that WSRC could expect him to work if WSRC had a job he could do with the restrictions. (Tab 19, 262, 777). Lawrence also complained that he should not be expected to come to work because he could not drive his manual transmission car. (Tab 18, 776).

Lawrence did not remind his supervisor that he was going out and did not give the WSRC doctor or his supervisor documentation of how long he would be out. In fact, Lawrence didn't even tell anyone who his doctor was or where the bunionectomy was being performed. The following week, Lawrence still had not communicated with medical or his management. Lawrence admitted that, at this point, WSRC had no way of knowing his condition or when he would be back. (Tab 1, 84-86). Lawrence claimed he was not required to check in because no WSRC policy required this. (Tab 1, 86). Medical therefore began calling Lawrence to try to find out his status. (Tab 24, 780). WSRC doctor Dr. Botnick felt that three weeks leave should be more than sufficient to recover from a bunionectomy. Dr. Botnick eventually tracked down Lawrence's doctor and found out that Lawrence was going to be evaluated on September 7, 2000 and given return to work restrictions. (Tab 24, 780). September 7 came and went. On September 11, Lawrence's supervisor (Ralph Thigpen) made repeated calls to Lawrence at his home, his mother's home, and his ex-wife's home. (Tab 28, 351-352). Lawrence admitted that he was refusing to answer phone calls from Thigpen, Dr. Botnick, and others because he did not want to talk to them. (Tab 1, 106). When the supervisor finally reached Lawrence, Lawrence reacted angrily, called his supervisor a "peon" who could not tell him what he could do. (Tab 1, 102).

The doctor's note that the WSRC medical department eventually received (on September 25) indicated that Lawrence *could* return to work. (Tab 29, 354) (Tab 1 Lawrence p. 83). The note indicated that Lawrence had restrictions if he did come back to work but it did not prohibit him from working. When told he needed to return

to work, Lawrence balked. (Tab 1, 93-100). Lawrence refused to accept that WSRC could expect him to come into work if WSRC could accommodate the restrictions. (Tab 1, 89-90). Although the restrictions permitted him to come to work, Lawrence refused in part because he could not drive his standard transmission car. (Tab 1, 89). Again Lawrence refused to answer his phone. Dr. Botnick left numerous phone messages that Lawrence was expected to be at work on September 11. (Tab 30, 782). Because Lawrence did not respond, WSRC faxed a notice to Lawrence telling him that WSRC was stopping Lawrence's short-term disability pay. According to Lawrence's own testimony, this got his attention (Tab 1, 99) and Lawrence answered Dr. Botnick's call on September 12, 2000. Lawrence again complained he should not be required to come to work because he had not been fully released by his physician. (Tab 1, 89-90, 95-98). Lawrence admitted, however, that the only doctor's note given to WSRC contained only restrictions – not a work exclusion. (Tab 1, 89). Instead of immediately coming back to work, however, Lawrence was absent from work on September 12 and 13 allegedly because of dental surgery. (Tab 31, 353).

Lawrence did not return to work until September 22, 2000. The day he returned to work, his supervisor found him asleep when he was supposed to be working. (Tab 32, 420). Lawrence admitted he was frequently asleep at work. (Tab 1, 104-106). Lawrence told his supervisor to leave him alone before he did something he would regret. (Tab 32, 420).

Lawrence went out of work again complaining of pain from the dental surgery.